

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

75-1143

B
PMS

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 75-1143

UNITED STATES OF AMERICA

Plaintiff-Appellee

vs.

JAMES V. CANESTRI

Defendant-Appellant

APPENDIX TO BRIEF OF DEFENDANT-
APPELLANT

JAMES V. CANESTRI



IRA B. GRUDBERG, ESQ.
JACOBS, JACOBS & GRUDBERG, P.C.
207 ORANGE STREET
NEW HAVEN, CONNECTICUT 06503

Attorneys For Defendant-Appellant
James V. Canestri

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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

JUDGE ZAMPANO

Crim. No
13,210

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. JAMES V. CANESTRI	For U. S.: Stewart H. Jones, U. S. Atty. Thomas F. Maxwell, Jr. Asst. U. S. Attorney Federal Building New Haven, Conn. Bridgeport, Conn.
	For Defendant: Ira Grudberg 207 Orange St. New Haven, Conn.

STATISTICAL RECORD	COSTS	DATE 1975	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	3/18	Jacobs, Jacobs &	5 00	
J.S. 3 mailed	Marshal		Grudberg (Appeal)		
Violation U.S. Code	Docket fee	3/21	Deposit: G.F.100869		5 00
Title 26					
Sec. 5861(d) & 5871					

DATE	PROCEEDINGS
1972	
11/21	The Grand Jury at New Haven returned a True Bill of Indictment charging violation of 26 USC 5861(d) & 5871-possessing unregistered firearms- 3 counts. Summons may issue for December 11, 1972 at 10:00 a.m. in Bridgeport. Newman, J. m-11/22/72.
11/22	Summons issued in duplicate and with certified copy of Indictment handed U.S. Marshal for service.
11/28	Marshal's return showing service, filed. Summons.
11/8	Letter containing Indictment and Summons (copy of) returned marked (unclaimed).
12/11	PLEA: Continued to next criminal day. Zampano, J. m-12/12/72.
12/26	PLEA: Plea of not guilty entered to Counts 1, 2 and 3. Case continued on same bond for trial. Motions to be filed by 2/9/73. Zampano, J. m-12/27/72.
11/2	U. S. Magistrate's Papers, filed: Record of Proceedings, Warrant of Arrest, Complaint, Affidavit of Charles A. Petersen, Appearance Bond in the amount of \$2,500.00 (personal surety).
1973	
1/12	Appearance of Ira B. Grudberg, Esq., entered for defendant. (over)

1a

DATE	PROCEEDINGS
1973	
1/17	Motion for Warrant of Arrest and Revocation of Bond, filed by Government.
1/26	Motion to Expnd Limits of Bond, filed by defendant.
1/26	Affidavit of James V. Canestri, filed.
2/5	Order, filed and entered that territorial limitations of defendant's bond be expanded to include the Commonwealth of Massachusetts only for the specific purpose of attending District Court on 2/6/73. Zampano, J. m-2/6/73. Copies mailed to counsel.
2/8	Motion to Compel Government to Disclose Name and Address of So-Called Reliable Informant, filed by defendant.
2/8	Motion to Transcribe Grand Jury Testimony, filed by defendant.
2/8	Motion to Suppress Evidence, filed by defendant.
2/8	Motion for Discovery and Inspection and for Evidence Favorable to the Defendant filed by defendant.
2/8	All above motions noticed for 2/26/73 at New Haven or Bridgeport, except Motion to Suppress.
2/13	Hearing held on defendant's Motion to Expand Limits of Bond - granted on 2/5/73; plaintiff's Motion for Warrant of Arrest and Revocation of Bond - denied without prejudice and motion so endorsed. Zampano, J. m-2/13/73. Copies mailed to counsel.
2/15	Court Reporter's Sound Recording of proceedings held on Dec. 26, 1972, filed. Plea (Russell, R.)
2/23	Following endorsement on defendant's (1) Motion to Compel Government to Disclose name and Address of So-Called Reliable Informant - off, without prejudice; (2) Motion to Transcribe Grand Jury Testimony - granted, absent objection; (3) Motion for Discovery and Inspection and for Evidence Favorable to the Defendant - granted, absent objection. Zampano, J. m-2/26/73. Copies mailed to counsel.
2/26	Defendant's (1) Motion to Transcribe Grand Jury Testimony - off, without prejudice; (2) Motion for Discovery and Inspection - off, without prejudice; (3) Motion to Compel Government to Disclose - off, without prejudice. Zampano, J. m-2/27/73.
2/22	Court Reporter's Notes of proceedings held on Dec. 26, 1972, filed. Plea (Russell, R.)
10/10	On RCZ's Jury Assignment List. Marked ready, Case #5. (Motion to Suppress pending - counsel to agree on date for hearing). Zampano, J. m-10/11/73.
12/12	Defense counsel presently on trial in State Court. He is to notify Court immediately when he will be available. Zampano, J. m-12/12/73.
1974	
1/4	Court Reporter's Notes of proceedings held on Dec. 12, 1973, filed. Gale, R.
1/29	On RCZ's Jury Assignment List. Case marked ready. Motion to Suppress to be heard on Jan. 31, 1974. Zampano, J. m-1/29/74.
2/6	Hearing on defendant's Motion to Suppress. Government Exhibits 1, 2 and 3, filed. 2 defendant witnesses sworn and testified. Briefs to be filed by 2/15/74 and reply briefs by 2/21/74. Decision reserved. Zampano, J. m-2/6/74.
2/15	Brief in Support of Motion to Suppress Evidence, filed by defendant.
2/20	Memorandum of Law in Opposition to Defendant's Motion to Suppress Evidence, filed by the Government.
2/21	Reply Brief in Support of Motion to Suppress Evidence, filed by the defendant.
2/25	Reply to Defendant's Brief and Motion to Suppress Evidence, filed by the Government.
2/22 5/23	Marshal's Return showing service, filed; Subpoena to produce (1). Ruling on Motion to Suppress, filed and entered. The motion is denied. Zampano, J. m-5/23/74. Copies mailed to counsel.

Continued
laa

DATE	PROCEEDINGS
1974	
6/19	On RCZ's Jury Assignment List. Jury trial to be waived and case tried to the Court, to be placed on Court-Jury Assignment List for Aug. 13, 1974. Zampano, J. m-6/19/74.
6/27	Court Reporter's Notes of proceedings held on June 19, 1974, filed. Russell, R.
8/13	On RCZ's Jury Assignment List. Case continued until September. Government to confer with defense counsel on September 1, 1974. Zampano, J. m-8/13/74.
9/25	Court Reporter's Transcript of proceedings held February 6, 1974 (Motion to Suppress), filed. Beecher, R.
10/15	On RCZ's Jury Assignment List. Marked Ready #2. Jury to be impanelled on 10/16/74. Zampano, J. m-10/15/74.
10/16	JURY TRIAL COMMENCES: Defendant's jury questions filed. Oath on voir dire administered to jurors. 37 jurors respond to roll call. Court describes case on trial. 12 jurors and 2 alternates impanelled and sworn. Jury excused in this case to October 23, 1974 at 10:30 a.m. Attorneys Maxwell and Grudberg are to be notified that the trial in this case will begin October 23, 1974 at 10:30 a.m. Zampano, J. m-10/17/74.
10/17	Court Reporter's Notes of proceedings held on October 16, 1974 (Trial), filed. Russell, R.
10/23	JURY TRIAL CONTINUES: Renewal of motion to suppress evidence, filed by defendant, denied. Defendant's motion for sequestration of witnesses, granted. Hearing on motion to suppress prior to trial. 2 Government witnesses sworn and testified. Defendant sworn and testified. Defendant's Exhibit 1, filed. Court Exhibit 3, filed. Court reports to counsel that juror #8, Mrs. Greenhouse, is ill. By agreement of counsel, Court places Alternate #1, Mrs. Tommaselli, as juror #8. 11:50 a.m. jury enters courtroom. 12 jurors and 1 alternate present. Jury excused to 2:00 p.m. Court puts on record rulings on motions to suppress. 2:12 p.m. jury enters courtroom. 5 Government witnesses sworn and testified. Government Exhibits 1, 2 and 6, filed. Government Exhibits 3, 4, 5, 7, 8 and 9 marked for identification. Government Exhibits 3, 4, 5, 7 and 9 admitted as full exhibits. 4:27 p.m. Government rests. Defense rests. 4:29 p.m. jury excused in this case to 10:30 a.m. Oct. 24, 1974. Court Exhibit 3500 marked for identification. 4:35 p.m. Court adjourned to 10:30 a.m. Oct. 24, 1974. Zampano, J. m-10/24/74.
10/24	JURY TRIAL CONTINUES: Defendant's request to charge, filed. Court informs counsel of proposed rulings on requests to charge. 10:46 jury enters courtroom, 12 jurors and 1 alternate present. Government Ex. 8-A, filed. Summation: Government opens 11:49 - 11:05 a.m. Defendant 11:05 - 11:37 a.m. Government closes 11:37 - 11:43 a.m. Court's charge 1:10 - 1:33 p.m. 1:34 jury retires to jury room. Government takes exception to charge. Defendant no exceptions. No further charge given. 1:38 p.m. All full exhibits and Indictment taken to the jury room and jury starts to deliberate. 3:38 p.m. note from jury. Court Ex. 1 marked for identification. 3:40 p.m. jury enters courtroom, Jury returns to deliberate at 3:42 after hearing additional charge. Jury returns at 4:13 p.m. with verdict of guilty on all three counts. Jury polled at request of defendant. Verdict verified and ordered recorded. Court Ex. 2 marked for Identification. Jury excused. Same bond to continue. 4:18 p.m. Court adjourned.
10/29	Motion for New Trial, filed by defendant.
10/30	Court Reporter's Notes of proceedings held on Oct. 23 and 24, 1974

DATE
1974

PROCEEDINGS

1975	(Jury Trial), filed. Russell, R.
3/10	On RCZ's Misc. Calendar, Defendant's Motion for New Trial, "Motion Denied." Zampano, J. m-3/10/75.
3/10	DISPOSITION: Defendant is committed to the Cust'd'y of the Atty. General or his authorized representative for imprisonment for a period of 18 months on Counts 1, 2, & 3. Bond to continue \$2,500.00 personal appearance for appeal purposes. Zampano, J. m-3/10/75.
3/10	Motion for New Trial endorsed as follows "Denied." Zampano, J. m-3/10/75
3/14	Court Reporter's Notes of Proceedings held on Mar. 10, 1975, (Dispositions), filed. Russell, R.
3/17	Judgment and Committment, filed and entered. Zampano, J. m-3/18/75. Two certified copies handed to U.S. Marshal for service.
3/18	Notice of Appeal, filed by defendant. Copy sent to U.S. Atty.
3/19	Certified copies of Notice of Appeal and docket entries to Clerk, U.S.C.A.
4/5	Record on Appeal sent U.S. Court of Appeals. Copies o. Index and docket entries sent Attys Dorsey and Gruberg.
4/3	Court Reporter's Sound Recording of Proceedings (Disposition) held on March 10, 1975, filed, Russell, R.
4/9	Receipt for Index to Record on Appeal, received from the Clerk, U.S.C.A.
4/15	Court Reporter's Transcript of Proceedings (Trial), held on Oct. 23, and 24 1974, filed. Russell, P.
4/18	Supplement to the Record on Appeal sent U.S. Court o Appeals. Copies of Clerk's Certificate sent counsel.
4/24	Receipt for Supplement to Record on Appeal, received from the Clerk, U.S.C.A.

aaaa

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : BOSTON - 1971

v. : CRIMINAL NO. 13-210

JAMES V. CANESTRI : BOSTON - 1971

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT ONE

On or about October 19, 1972 at Orange, in the District of Connecticut, JAMES V. CANESTRI, the defendant herein, did knowingly possess a certain firearm, to wit: a Colt AR-15, Model 614 automatic rifle, 5.56 mm., Serial No. 210029X, which firearm had not been registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Section 5861(d) and 5871.

5845(5)

COUNT TWO

On or about October 19, 1972 at Orange, in the District of Connecticut, JAMES V. CANESTRI, the defendant herein, did knowingly possess a certain firearm, to wit: a German MP-40 machine pistol, 9 mm. parabellum, Serial No. 7437, which firearm had not been registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Section 5861(d) and 5871.

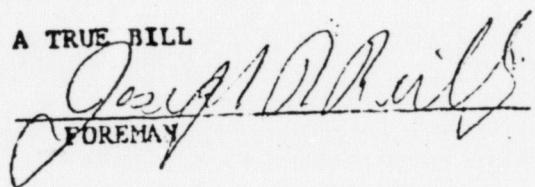
5845(6)

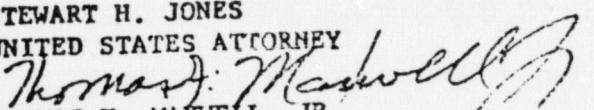
COUNT THREE

On or about October 19, 1972 at Orange, in the District of Connecticut, JAMES V. CANESTRI, the defendant herein, did knowingly possess a certain firearm, to wit: a Marlin Model 75, 22 caliber short barreled rifle bearing no serial number, which firearm had not been registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Section 5861(d) and 5871.

5845(a)(3)

A TRUE BILL


Foreman

STEWART H. JONES
UNITED STATES ATTORNEY

THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)
)
)
VS.) CRIMINAL NO. 13,210
)
)
JAMES V. CANESTRI)
)

MOTION TO SUPPRESS EVIDENCE

The defendant moves, pursuant to Rule 41, Federal Rules of Criminal Procedure, to suppress all the fruits of a search of premises at 85 Granniss Road, Orange, Connecticut as evidence in these proceedings, and states that said search was illegal, and the seizure of the three alleged weapons which are the basis of the three counts of this indictment was illegal and violated the defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States, as follows:

1. Said search was conducted based upon a warrant issued by Connecticut State authorities, which warrant was, upon information and belief, issued without a proper showing of probable cause to the judicial officer issuing said warrant.
2. Said warrant was issued for a very narrow enumerated list of properties to be searched for and seized, and the search of the State authorities resulting in the seizure of items was broad,

far ranging, and far beyond the scope of the authority granted by the warrant.

3. Said search was in effect a general search for evidence conducted over a period of approximately eight hours.

4. During the illegal presence of the officers on the premises, they may claim to have taken statements from the defendant. If so, any of said statements would be tainted by the illegal presence on the premises, and by the illegal search, and are otherwise suppressible.

WHEREFORE, defendant moves that the court order suppressed as evidence all tangible items seized in the search of the above premises, along with any claimed statement, admissions and/or confessions taken from the defendant at said time, and afterward.

Dated at New Haven, Connecticut this 7th day of February, 1973.

THE DEFENDANT
JAMES V. CANESTRI

By _____

IRA B. GRUDBERG
JACOBS, JACOBS & GRUDBERG
207 ORANGE STREET
NEW HAVEN, CONNECTICUT
His Attorneys.

C E R T I F I C A T I O N

This is to certify that on the 7th day of February, 1973, a copy of the above Motion to Suppress Evidence was mailed, postage prepaid, to Thomas Maxwell, Jr., Esq. Assistant United States

5a

MICRFILM

FEB 26 1973

NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

FEB 8 8 30 AM '73

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA)
VS.)
JAMES V. CANESTRI)

CRIMINAL NO. 13,210

FEB 23 4 08 PM '73
U.S. DISTRICT COURT
NEW HAVEN, CONN.

2/23/73
O/H, return / pre-judg.
R.C.J. 1/1/73

MOTION TO COMPEL GOVERNMENT TO
DISCLOSE NAME AND ADDRESS OF
SO-CALLED RELIABLE INFORMANT

The defendant in the above captioned action hereby moves that the court order the government to disclose the name and address of the so-called reliable informant who allegedly furnished virtually the entire claimed probable cause for a search of premises at 85 Granniss Road, Orange, Connecticut, on October 19, 1972, as said informant gave the alleged core of probable cause, and without said informant's name and address, the defendant will be prevented effectively from challenging or exploring the alleged basis for the search of said premises.

Dated this 7th day of February, 1973 at New Haven,
Connecticut.

THE DEFENDANT
JAMES V. CANESTRI

By


IRA B. GRUDBERG
JACOBS, JACOBS & GRUDBERG
207 Orange Street /
New Haven, Connecticut
His Attorneys

C E R T I F I C A T I O N

This is to certify that on the 7th day of February, 1973 a

AFFIDAVIT AND APPLICATION
SEARCH AND SEIZURE WARRANT
CCT-7A REV. 9-66

STATE OF CONNECTICUT
CIRCUIT COURT

Clerk Disposition Certificate (page 4) must be completed.

TO: A Judge of the Circuit Court

The undersigned, being duly sworn, complains on oath that the undersigned has probable cause to believe that certain property, to wit:

Antique firearms such as: Pair of dueling pistols, pepper pot six barrels pistol, two barrel pistol, single barrel pistols, silver pin fire guns, white steel hand guns, 32 calibre hammerless pistols, winchester rifle pistol, 31 calibre hand guns, small hand guns, palm guns, and Belgium hand guns.

is possessed, controlled, designed or intended for use as a means of committing the crime of . . .

is or has been or may be used as the means of committing the crime of . . . Larceny 1st. Degree, Section 53a-122

was stolen or embezzled from . . . Anthony Mezzanotte of 544 Locust Drive, Orange, Connecticut

And is within or upon a certain person, place, or thing, to wit . . . A white granite brick front ranch type house with a two car garage attached located at 85 Granniss Road, Orange, Connecticut. #85 is on the south side of Granniss Road and there is a circular driveway in front of home.

And that the facts establishing the grounds for issuing a Search and Seizure Warrant are the following . . .

1. The undersigned affiants are members of the Police Department of the Town of Orange, Connecticut, both holding ranks of Patrolman and having served in the department five years and three months respectively, during which time they have participated in numerous burglary investigations.

2. That on October 16, 1972, Mr. Anthony Mezzanotte of 544 Locust Drive, Orange, Connecticut, reported to members of this department that his home had been burglarized sometime between 10:00 A.M. and 11:30 A.M. on October 16, 1972 and had stolen an antique gun collection valued in excess of \$9,000.00. Such firearms were, pair of dueling pistols with wood grain stocks, eight sided barrel, 85 calibre with built in ram rod. a six barrels pepper pot with solid stock rotating barrels made of a dark brown metal, a two barrel over under silver engraved pistol with wood grips, a single barrel pistol of brown metal with brown grips, silver pin fire guns with built in cleaning rods and hammerless, a all engraved white steel hand gun, a nickel plated 32 calibre hammerless pistol with mother of pearl grip in a black leather case, a winchester rifle pistol, automatic 10 shot with a nine inch barrel, overall length is fourteen inches, 31 calibre nichel plated hand guns with a five inch barrel and no trigger guard, small hand gun approximately three inches long, a twenty inch 45 calibre belgium hand gun with a lip at the end of the barrel, and palm guns, five shot and 22 calibre, four inches long with no trigger guards.

3. That on October 18, 1972, an informant whom the affiant, Roger Addil, has known for the past two years advised him that he had been at the Canestri residence, 85 Granniss Road, Orange, Connecticut, during the evening of October 17, 1972 and he had been shown while on said premises several antique hand-guns by Joseph Canestri of said address. The informant further described to your affiant various guns that he had seen while on the premises and stated that amongst others there were: rotating multi-barrel revolver; a nickle plated revolver without a trigger guard; a hammerless revolver and a revolver with a very long barrel, all of which fit the description of guns taken from the Mezzanotte home on October 16, 1972. The informant further advised your affiant, Addil, that Joseph Canestri had stated to the informant that he had purchased several antique hand-guns.

AFFIDAVIT AND APPLICATION

(Continued)

4. The undersigned were advised by Sergeant McLean on October 18, 1972, that Joseph Canestri was known to him as a juvenile who did reside in the Town of Orange at the above location and with whom he has had previous experience when he was found to be in possession of stolen merchandise taken from a house break in the Town of Orange on or about January 9, 1972.

5. That on October 18, 1972, a reliable informer known to affiant Robert Stankye for three years and who has furnished him with substantiated information on numerous occasions, and reliable information which has led to five arrests and five convictions, told him that on October 16, 1972, at 11:00 A.M. one Kenneth Davis showed him three hand guns which he had concealed beneath the front seat of his 1964 Chevrolet. That, this informer described one of the hand guns as having what he thought was eight (8) rotating barrels and that a second hand gun was nickel plated.

6. That it is common knowledge to members of this department and the undersigned that Joseph Canestri and Kenneth J. Davis Jr. are friends and associates and the undersigned were advised that Kenneth J. Davis Jr. had been in the Mezzonotte house within the past three months. That Kenneth J. Davis Jr. operates a 1964 Chevrolet painted with dark grey primer paint, Connecticut registration L0-8060 which the Department of Motor Vehicles confirms is registered to Kenneth J. Davis of 346 Knight Lane, Orange, Connecticut.

7. That Sergeant Russell McLean of the Orange Police Department checked with the Town Clerks Office and is certain that Josephine R. Canestri is the owner of the property at 85 Granniss Road, Orange, Connecticut, and records of this police department indicates that Josephine R. Canestri is the mother of Joseph A. Canestri and they know the subject Joseph Canestri resided at said address.

8. That the Town Clerk of the Town of Orange, Connecticut, also establishes that the property at 346 Knight Lane is owned by Kenneth J. and Josephine M. Davis and records of this department indicate that they are the parents of Kenneth J. Davis Jr. and the officers know that said Kenneth J. Davis Jr. resides at said address.

9. That the undersigned states that they have probable cause to believe that the antique gun collection stolen from the Anthony Mezzonotte residence on October 16, 1972, is presently secreted at the Josephine Canestri residence, 85 Granniss Road, Orange, Connecticut in violation of the Connecticut General Statutes, Larceny, 1st. Degree, Section 53a-122.

The undersigned has not presented this application in any other court or to any other judge.

Wherefore the undersigned prays that a warrant may issue commanding a proper officer to search said person or to enter into or upon said place or thing, search the same, and take into custody all such property.

Signed at

Mylor, Connecticut, this 19 day of October, 1972

SIGNATURE AND TITLE OF AFFIANT

X Robert F. Stankye

Signed at

Mylor, Connecticut this 19 day of October, 1972

SIGNATURE AND TITLE OF AFFIANT

X Robert F. Adelit

SIGNED (A Judge of the Circuit Court)

JURAT Subscribed and sworn to before me this 19 day of October, 1972

X

8a

SEARCH AND SEIZURE WARRANT
CCT-7B REV. 9

STATE OF CONNECTICUT
CIRCUIT COURT

The foregoing Affidavit and Application for Search and Seizure Warrant having been presented to and been considered by the undersigned, a Judge of the Circuit Court, the undersigned (a) is satisfied therefrom that grounds exist for said Application, and (b) finds that said Affidavit establishes grounds and probable cause for the undersigned to issue this Search and Seizure Warrant, such probable cause being the following: From said Affidavit, the undersigned finds, that there is probable cause for the undersigned to believe that the property described in the foregoing Affidavit and Application is within or upon the person, if any, named or described in the foregoing Affidavit and Application, or the place or thing, if any, described in the foregoing Affidavit and Application, under the conditions and circumstances set forth in the foregoing Affidavit and Application, and that, therefore, a Search and Seizure Warrant should issue for said property.

NOW THEREFORE, by Authority of the State of Connecticut, I hereby command any Police Officer of a regularly organized police department or any State Policeman to whom these presents shall come within ~~coconocencia~~ after the date of this warrant to

enter into or upon and search the place or thing described in the foregoing Affidavit and Application, to wit: A white granite brick front ranch type house with a two car garage attached located at 85 Granniss Road, Orange, Connecticut. #85 is on the south side of Granniss Road and there is a circular driveway in front of the house.
 search the person described in the foregoing Affidavit and Application, to wit:

for the property described in the foregoing Affidavit and Application, to wit: Antique firearms such as: Pair of dueling pistols, pepper pot, two barrel pistols, single barrel pistols, silver pin fire guns, white steel hand guns, 32 calibre hammerless guns, winchester rifle pistol, 31 calibre hand guns, small hand guns, palm guns, and Belgium hand guns.

*and upon finding said property to seize the same, take and keep it in custody until the further order of the court, and with reasonable promptness make due return of this warrant accompanied by a written inventory of all property seized.

Signed at

Milford, Connecticut, this 19 day of October, 1972

SIGNED (Judge of the Circuit Court)

X Phil

9a

**RETURN FOR AND INVENTORY
PROPERTY SEIZED ON SEARCH AND SEIZURE WARRANT
CCT-7C REV. 9-66**

COUNTY OF	TOWN OF	DATE OF SEIZURE	State of Connecticut
New Haven	Orange	10-19-72	

Then and there by virtue of and pursuant to the authority of the foregoing warrant, I searched the person, place, or thing named therein to wit: A white granit brick front ranch type house with a two car grage attached located at 85 Granniss Road and there is a circular driveway in front.

and found thereon or therein, seized, and now hold in custody, the following property . . .

- 1 -- Colt AR-15 Model 614 Cal. 5.56 MM. with clip and five rounds Serial #210029X - Rifle
- 1 -- Colt AR-15 Model 614 Cal. 5.56 mm. Serial #SP00353 Rifle
- 1 -- German M.P.-40 Code FXO Machine Gun Serial #7437
- 3 -- Selector switches for M-16
- 1 -- Marlin 22 Cal. Short Barrel Model 75 Ser. ND-107158
- 1 -- High Standard 22 Cal. Supermatic Model 107 Ser. #2183846 Pistol
- 1 -- Sturm Ruger, Blackhawk 41 Cal. Magnum Ser. 40-09918 Revolver
- 1 -- Sturm Ruger, Blackhawk 357 Magnum Ser. 30-54994 Revolver
- 1 -- Winchester 30-30 Model #94 Rifle Ser. CB-2794
- 1 -- Remington 350 Magnum Rifle Model 600 Ser. #64593 with Weaver Scope
- 1 -- Tuna Knife Model 6377 Ser. 11071

which was possessed, controlled, designed, or intended for use as a means of committing the crime described in the foregoing affidavit and application, or is or has been used as the means of committing the crime described in the foregoing affidavit and application, or was stolen or embezzled.

DATE OF THIS RETURN

October 20, 1972

SIGNED (Officer's signature and department)

X Bernard J. Foye Jr. ORANGE POLICE DE

DISPOSITION CERTIFICATION

CCT-7D REV. 9-66

In Rem No.

In Rem Judgment Date

TITLE	STATE OF CONNECTICUT vs.	CIRCUIT NO.	IN REM HELD AT (Town)	ON (Date)

The undersigned hereby certifies that the property inventoried in the foregoing inventory was

- destroyed pursuant to a judgment of said court
- ordered confiscated and, according to law, delivered to the clerk of said circuit
- except _____

which was disposed of as follows:

- disposed of as follows: _____

DATE OF THIS CERTIFICATE

SIGNED (Asst. Clerk of Court)

X

10a

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

knowledge in the Orange County Department that Davis and
v. : CRIMINAL NO. 13,210
Canestri were friends and associates and that Davis had
JAMES V. CANESTRI :
recently visited at the Canestri home.

RULING ON MOTION TO SUPPRESS

The defendant, James V. Canestri, moves to suppress as evidence three firearms which form the basis for the three-count indictment charging him with the knowing possession of weapons not registered to him in the National Firearms Regis-

tration and Transfer Record, in violation of 26 U.S.C.

§ 5861(d) and 5871.

¹ See also the discussion of the Chinese model in the section on "The Chinese Model" below.

Frontiers Read in Lecture, at Leave in Sec. Chancery 4 1873.

On October 16, 1972, police were notified by one Joseph Anthony Mezzonotte of Orange, Connecticut that his home had been burglarized and that a valuable antique gun collection was missing. Two days later, an informant "known" to patrolman Rodger Addil reported to the officer that while at the home of Joseph Canestri, a reputed possessor of stolen merchandise, he observed certain antique guns which fit the description of the weapons in the Mezzonotte collection. On that same date, a reliable informer, who had furnished the police with "substantiated information on numerous occasions which led to five convictions", indicated to police officer

Robert Stankye that on the night of the Mezzonotte robbery one Kenneth J. Davis, Jr., had certain guns in his possession similar to those taken in the burglary. It was common knowledge in the Orange Police Department that Davis and Canestri were friends and associates and that Davis had recently visited at the Canestri home.

This information was set forth in two affidavits by officers Addil and Stankye who then successfully applied to the Honorable Alvin Rottman, a judge of the Connecticut Circuit Court, for warrants authorizing the search of the Davis and Canestri homes and the seizure of specified antique firearms and the Davis' Remington collection if they were not arms.

At approximately 8:00 P.M. on October 19, 1972, police commenced a search of the Canestri home located at 85 Granniss Road in Orange. At home at the time was Mrs. Josephine Canestri, the owner of the premises, and the mother of Joseph Canestri who also occupied the house. Although a search of Joseph's bedroom uncovered a hidden set of narcotics' paraphernalia, the items enumerated in the warrant were not found in the upper floors of the house. Police then proceeded to the basement and discovered a locked storeroom. Mrs. Canestri informed the officers that this room was "used" by her older son, James Canestri, the defendant herein, who resided elsewhere. The defendant was contacted by telephone and gave police permission to break into the storeroom "as gently as possible."

Upon prying the door open, police discovered a total of 70 weapons located on the floor, on counters and in cabinets, along with a set of narcotic "works." Officer Rubino selected five guns at random and relayed the serial numbers to the National Crime Information Center in Hartford, Connecticut. When he was informed that one of the weapons was stolen, Rubino for the next three hours systematically "checked out" each of the guns with the Center. Eleven of the guns were determined to be contraband.

Meanwhile the defendant and his brother Joseph Canestri arrived on the premises at 9:30 P.M. and offered to provide police with the stolen Mezzonotte collection if they were not prosecuted on any "drug charges."^{1/} The police agreed and both brothers were permitted to leave the house to retrieve the stolen antique weapons. They returned several hours later with each of the guns described in the search warrant. The police left the premises at approximately 12:30 A.M. It was in the next day further investigation disclosed that three of the eleven weapons seized in the defendant's room had not been registered pursuant to the requirements of federal law. This prosecution followed.

II.

The defendant first contends that the search warrant was issued without probable cause for two reasons: (1) the

^{1/} The defendant concedes that no promises were requested or extended that related to any charges concerning the illegal possession of guns.

initial informant named in the affidavit was not demonstrated to be "reliable"; and (2) the underlying facts set forth in the affidavit were insufficient to justify a belief that the Mezzonotte gun collection was in the Canestri home. The Court disagrees.

There was a substantial basis for the state judge to conclude that the informant was reliable and that the antique guns were probably in the Canestri house. Cf. United States v. Harris, 403 U.S. 573 (1971); Suinelli v. United States, 393 U.S. 410 (1969); Aquilar v. State of Texas, 378 U.S. 108 (1964). While it is true the affidavit did not recite that the informant had previously supplied accurate information, reliability of an informant may be established in collateral ways. United States v. Sultan, 463 F.2d 1066, 1068-1069 (2 Cir. 1972); United States v. Bozza 365 F.2d 206, 225 (2 Cir. 1966). Here the informant was known to the officer affiant for two years. He personally observed the antique guns in the Canestri home and his detailed description of the weapons convinced the affiant that they "fit the description of guns taken from the Mezzonotte home" just two days before. In addition, the affidavit alleged that Canestri was known to police to have stolen merchandise in his possession on a previous occasion. Corroboration was further provided by a reliable, tested informer who disclosed to the police that on the night of the burglary a close friend and associate of Canestri had the weapons in his possession.

Therefore, even assuming the original tip from the first informant was itself insufficient, it was buttressed by trustworthy information obtained independently by police to produce probable cause. The official verification of the crime, the tip from a known informant, corroboration by a reliable informer, and police knowledge of the suspect's reputation were factors which, in combination, adequately afforded a basis upon which the state judge properly determined the constitutional propriety of the affidavit and reasonably issued the warrant. See United States v. Harris, supra, 403 U.S. at 580-583; United States v. Ventresca, 380 U.S. 102, 109 (1965); Rugendorf v. United States, 376 U.S. 528, 531-533 (1964); United States v. Canieso, 470 F. 2d 1224, 1231 (2 Cir. 1972); United States v. Viggiano, 433 F. 2d 716, 718-719 (2 Cir. 1970); McCreary v. Sigler, 406 F.2d 1264, 1269-1270 (8 Cir. 1969); United States v. Cotham, 363 F.Supp. 851, 856 (W.D.Tex. 1973); United States v. Majchszak, 357 F.Supp. 1371, 1373-1374 (E.D.Wisc. 1973).

The scope of the search is set forth in the warrant. It shall commence at the place of arrest and shall be no more than

The defendant next claims that the search of the rear garage, a room which was not included in the area of the storeroom exceeded the area of authority delimited by the warrant.

It seems clear, however, that the permissible scope of the search extended to every room in the house, including the locked storeroom in the basement. The search warrant

accurately described the premises; the Town Clerk's Office in the Town of Orange listed Mrs. Joseph Canestri as the owner of the property; and police files noted that Joseph Canestri resided there. The warrant did not limit the search to Joseph's bedroom and the police had no notice of a possible dual ownership of the storeroom until after the search was well underway when "it was too late for them, consistent with the success of their mission, to have retreated and obtained a new warrant." United States v. Santore, 290 F.2d 51, 67 (2 Cir. 1960), cert. denied, 365 U.S. 834 (1961).

Furthermore, since the storeroom was a likely place for the antique guns to be hidden, it was reasonable for the police to determine whether it contained the property described in the warrant for seizure. The defendant did not occupy the room and he was neither deceived nor coerced when he granted police permission to enter it. Compare, Stoner v. California, 376 U.S. 483 (1964). Thus, the actions of the officers in searching the storeroom were reasonable and within the scope of the commands set forth in the warrant. To hold otherwise, on the facts of this case, would be to suggest that the purposes of a search warrant could be frustrated by the mere declaration of the owner of a one-family residence that one of the rooms therein "belongs" to a party not named in the warrant. See United States v. Jordan, 349 F.2d 107, 109 (6 Cir. 1965); Walker v. United States, 327 F.2d 597, 599-600 (D.C.Cir. 1963), cert. denied, 377 U.S. 956 (1964).

The Court also rejects the defendant's final argument that the police here were engaged in a general exploratory search and seized items which were neither contraband nor described in the warrant or further inculpatory articles within. It is, of course, well established that officers may not conduct a general search, even with a warrant, Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931), and that the search warrant must specify the articles to be seized. Rule 41(c), F. R. Crim. P.; Stanford v. Texas, 379 U.S. 476 (1965); Marron v. United States, 275 U.S. 192 (1927). But, it has been equally recognized that "where a police officer has a warrant to search a given area for specified objects, and in the course of the search comes across some other article of incriminating character, the property is seizable under the plain-view doctrine." United States v. Pacelli, 470 F.2d 67, 70 (2 Cir. 1972), cert. denied, 410 U.S. 983 (1973). Cf. Coolidge v. New Hampshire, 403 U.S. 443, 465-466 (1971). In the case sub judice, the police, during the course of a carefully-conducted search pursuant to a properly executed warrant, fortuitously uncovered numerous weapons in a locked room in the basement of the premises. The officers in good faith were looking for several stolen antique guns; they found instead a hidden arsenal of weapons - on their

face presumptively contraband. Cf. Seymour v. United States, 369 F.2d 825, 827 (10 Cir. 1966). A spot check of the serial numbers of five guns selected at random revealed that one was stolen. Thereafter it was incumbent for the police to continue their quest for further incriminating articles within the room. The search was limited in scope and duration; there was no mass seizure. As soon as the investigation was completed, the police left the premises. Unlike the situation in United States v. Dzialak, 441 F.2d 212 (2 Cir. 1971), there was neither an "abhorrent general search" nor a "ransacking" of the house. Moreover, as in United States v. Pacelli, supra, at 71, the police had no prior knowledge of the cache.

Under these circumstances, the law enforcement officers were amply justified in seizing the contraband weapons and, at the first reasonable opportunity the following day, in ascertaining that federal law as well as local law had been violated as a result of the defendant's possession of the items. See, e.g., Harris v. United States, 390 U.S. 234, 236 (1968); United States v. Green, 474 F.2d 1385, 1390 (5 Cir. 1973); Anglin v. Director, Penitentiary Institution, 439 F.2d 1342, 1347-1349 (4 Cir. 1971); Gurleski v. United States, 405 F.2d 253, 258-260 (5 Cir. 1968); Johnson v. United States, 293 F.2d 539, 540 (D.C.Cir. 1961). (NY (not) me [initials] (not))

Accordingly, the defendant's motion to suppress is denied.

Dated at New Haven, Connecticut, this 22nd day of

18a

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : :

VS : CRIMINAL NO. 13,210

JAMES V. CANESTRI : :

RENEWAL OF MOTION TO SUPPRESS
EVIDENCE

The defendant hereby renews his pretrial Motion to Suppress Evidence based on all the grounds set forth in his brief and reply brief on said motion.

THE DEFENDANT
JAMES V. CANESTRI

BY

IRA B. GRUDBERG, ESQ.
JACOBS, JACOBS & GRUDBERG, P.C.
207 ORANGE STREET
NEW HAVEN, CONNECTICUT 06503
His Attorneys

C E R T I F I C A T I O N

This is to certify that a copy of the above Renewal of Motion to Suppress Evidence was hand delivered to Thomas F. Maxwell, Esq., Assistant United States Attorney, on October 23rd, 1974.

IRA B. GRUDBERG

19a

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)
)
VS.)
)
JAMES V. CANESTRI)
)

CRIMINAL NO. 13,210

MOTION FOR NEW TRIAL

The defendant, pursuant to Rule 33, Federal Rules of Criminal Procedure, hereby moves that the court grant him a new trial in the above captioned action.

THE DEFENDANT
JAMES V. CANESTRI

By _____

IRA B. GRUDBERG
JACOBS, JACOBS & GRUDBERG, P.C.
207 ORANGE STREET
NEW HAVEN, CONNECTICUT 06503
HIS ATTORNEYS

C E R T I F I C A T I O N

This is to certify that a copy of the above Motion for New Trial was mailed postage prepaid to Thomas F. Maxwell, Esq., Assistant United States Attorney, on October 25, 1974.

IRA B. GRUDBERG

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

)
VS.

)
JAMES V. CANESTRI

)
CRIMINAL NO. 13,210
)
)

NOTICE OF APPEAL

The defendant in the above captioned action hereby serves notice that he is appealing his judgment of conviction, and the sentence of eighteen (18) months imprisonment, imposed by this court on March 10, 1975, to the United States Court of Appeals for the Second Circuit.

THE DEFENDANT
JAMES V. CANESTRI

By _____

IRA B. GRUDBERG
JACOBS, JACOBS & GRUDBERG, P.C.
207 ORANGE STREET
NEW HAVEN, CONNECTICUT 06503
HIS ATTORNEYS

C E R T I F I C A T I O N

This is to certify that a copy of the above Notice of Appeal was mailed postage prepaid to Thomas F. Maxwell, Esq., Assistant United States Attorney, on March 18, 1975.

IRA B. GRUDBERG

21a

1 MR. GRUDBERG: Yes.

2 THE COURT: All right. Why don't you call
3 your first witness?

4 MR. GRUDBERG: I may as well proceed.

5 MR. MAXWELL: Yes.

6 MR. GRUDBERG: Officer Rubino.

7
8 ROBERT RUBINO, called as a
9 witness, having been first duly sworn, testified
10 on his oath as follows:

11 THE CLERK: Please state your name and
12 address for the record.

13 THE WITNESS: Robert Rubino. 355 Boston
14 Post Road, Orange, Connecticut.

15 DIRECT EXAMINATION

16 BY MR. GRUDBERG:

17 Q Mr. Rubino, by whom are you employed, sir?

18 A Orange Police Department, sir.

19 Q And how long have you been so employed?

20 A Approximately fourteen years, sir.

21 Q And what is your title or rank?

22 A Sergeant, sir.

23 Q And are you a Sergeant of Detectives?

24 A No, sir. Patrol.

25 Q Were you in October of 1972 also in the Patrol

1 Division?

2 A Yes, sir.

3 Q Calling your attention to the afternoon or early
4 evening of October 19, 1972, did you have occasion to go with
5 any other police officers to the premises at 85 Grannis Road
6 in Orange, Connecticut?

7 A Yes, sir.

8 Q And at that time did you have with you a search
9 warrant issued by the Circuit Court authorizing or purporting
10 to authorize a search of those premises?

11 A Yes, sir.

12 Q Who was with you when you first got there?

13 A Sergeant Cybart and myself were in the front of the
14 premises and Foyer, Assistant Chief Foyer and Detective Fumiatti,
15 I believe, went to the rear of the house.

16 Q All right. And did you arrive either in the same
17 car or in different vehicles, but together? Did the four of
18 you arrive at the premises at the same time?

19 A Exactly the same time.

20 Q I have some indication that a Sergeant Blackman and
21 Sergeant McLean were at the premises on that evening. Did
22 they arrive later?

23 A At a later time, yes.

24 Q About what time was it when you arrived, sir?

25 A Approximately eight o'clock, sir.

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

23a

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

1 Q In the evening?

2 A Yes, sir.

3 Q And who was present on the premises?

4 A Mrs. Canestri.

5 Q Was there anyone else present?

6 A At a later point, yes, sir.

7 Q All right. You say at a later point. Did a
8 fellow named Carl D'Biango ever arrive on the premises?

9 A Yes, sir.

10 Q Was he the first one other than Mrs. Canestri
11 to arrive there?

12 A Yes, sir.

13 Q And approximately how long after you arrived was
14 it that Mr. D'Biango arrived?

15 A Approximately a half hour, sir.

16 Q And did there come a time -- I will withdraw
17 that.

18 When was it, if you can recall, that
19 McLean and Blackman arrived if they arrived together?

20 A I can't recall that time.

21 Q You don't recall?

22 A No, sir.

23 Q Do you recall whether or not it was before or
24 after D'Biango arrived?

25 A It was after he arrived, sir.

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

24a
805 CHURCH STREET
NEW HAVEN, CONNECTICUT

1 Q Now, without going into a conversation, do you
2 know whether or not D'Biango arrived in response to some
3 phone calls made by Mrs. Canestri?

4 A I have no idea how he arrived or for what reason.

5 Q When you arrived at the premises, you indicated
6 that you and another officer went in the front and two officers
7 came in the back at the same time?

8 A Yes, sir.

9 Q And did you show Mrs. Canestri the Warrant?

10 A Yes, sir.

11 Q And did you begin to search the premises?

12 A We gave a copy of the warrant to the woman.

13 Q When you say you gave a copy of the warrant to the
14 woman, would it be fair to state that the Connecticut Circuit
15 Court warrants are -- there's sort of a single paper that
16 comprises both the affidavit and the warrant?

17 A That is correct, sir.

18 Q And you made a copy of the third page of that
19 which is the warrant and gave that to Mrs. Canestri?

20 A Yes, sir.

21 Q And did you then begin your search of the premises?

22 A Yes, sir.

23 Q Now, there came a time sometime during the evening
24 when you found a separate room in the cellar which was locked
25 is that correct?

1 A That is correct.
2

3 Q Now, setting that aside for a moment, I take it
you searched the rest of the premises?
4

5 A I searched the room, I asked Mrs. Canestri where
her son's room was.
6

7 Q Her son, Joseph?
8

9 A That is correct, sir.
10

11 Q And did you search Joseph's room?
12

13 A Yes, sir.
14

15 Q And did you find anything of any significance in
your mind in Joseph's room?
16

17 A A syringe, sir.
18

19 Q And did you take that syringe into your possession
at that point?
20

21 A I believe so. I showed it to Mrs. Canestri.
22

23 Q Now, is that the only room you searched?
24

25 A That is the only room I searched.
26

27 Q And were you in the presence of any of your fellow
officers when they searched any other portion of the house?
28

29 A Yes, sir. I went to the basement at that time
30 --
31

32 Q Yes.
33

34 A -- with reference to the unlocked room.
35

36 Q To the unlocked room?
37

38 A Or the locked room. I'm sorry.
39

1 Q And what happened? Was this before or after
2 Mr. D'Biango arrived?

3 A He was down there when I got to the basement, I
4 believe, sir.

5 Q Was he down there talking to some of the other
6 officers?

7 A Yes, sir. He was.

8 Q And this was at some time more than a half hour
9 after you arrived at the premises?

10 A It was approximately a half hour, sir. I can't
11 be too sure.

12 Q Mr. D'Biango had just arrived?

13 A I don't know what time he arrived, sir. He was
14 in that basement at that time.

15 Q All right. Now, who else was in the basement when
16 you got down there?

17 A Myself, Mr. D'Biango, Foyer, Assistant Chief Foyer,
18 and I believe Detective Fumiatti.

19 Q All right. So all four of the officers plus
20 Mr. D'Biango was in the basement?

21 A That is correct.

22 Q Was Mrs. Canestri down there too, if you recall?

23 A Excuse me, sir. You said all four officers.

24 Q Yes.

25 A I don't know about Detective Cybart. I don't know.

1 Q Detective --

2 A Detective Cybart. He and I went in the premises
3 together.

4 Q So in other words, there were at least three of you
5 down there?

6 A That is correct.

7 Q You, Foyer and Fumiatti?

8 A Yes, sir.

9 Q And D'Biango?

10 A Yes, sir.

11 Q Was Mrs. Canestri down there, if you recall?

12 A I can't recall that.

13 Q Was this at the time when this room was broken
14 into?

15 A The room wasn't broken into at this time, sir.

16 Q Okay. About how long after that time was it that
17 this locked room was broken into?

18 A An attempt was made by Mrs. Canestri to contact
19 James Canestri. She stated that he had a key to the room,
20 and we waited for that key to arrive.

21 Q Did she, in fact, indicate to you that that room
22 was used by her son, James Canestri, who did not live on the
23 premises?

24 A That is correct, sir.

25 Q And she indicated to you that that was pretty much

1 his room that he had used personally?

2 A The kid's room she said. The kid's.

3 Q Talking about James?

4 A I assume that is what she was referring to, sir.

5 Q That is the inference you got from what she said?

6 A That is correct.

7 Q And she indicated to you that James Canestri had
8 a key?

9 A Yes, sir.

10 Q And that to her knowledge -- and she did not
11 have a key?

12 A I assume she didn't have the key to the door. She
13 wouldn't open the door for us at that time due to the fact
14 there wasn't a key available.

15 Q She represented to you there was no key available
16 in her personal possession or, in fact, in the car?

17 A Yes, sir. I can infer from that.

18 Q Was it somewhere around this time that Mr. Joseph
19 Canestri arrived?

20 A No, sir.

21 Q Well, did Joseph Canestri arrive home prior to the
22 time when that room in the basement was broken into?

23 A No, sir. He came much later.

24 Q He came later?

25 A Yes, sir.

1
2 Q Now, you, apparently, had a conversation with
3 Carl D'Biango in the basement?
4

A Yes.

5 Q He indicated to you that he was a friend of
6 James Canestri; is that correct?
7

A That is correct.

8 Q And did he indicate to you that he had come in
9 response to a call from Mrs. Canestri?
10

A I didn't ask him that question.

11 Q Okay. Now, you indicated that Mrs. Canestri had
12 attempted to obtain a key --
13

A That is correct.

14 Q -- by calling her son?
15

A Yes.

16 Q Was that attempt made by her on the telephone?
17 Were you in the room or anything?
18

A No, sir.

19 Q She told you that she had tried?
20

A Yes, sir.

21 Q And did she tell you, in fact, she had been unable
22 to reach her son, James?
23

A That is correct.

24 Q Now, subsequent to your initial conversation in
25 the basement with Mr. D'Biango, did he, in fact, attempt to
or, in fact, reach Jimmy Canestri on the phone?

1 A I assume that there was a conversation between
2 the two.

3 Q All right. You had a conversation with D'Biango?

4 A That is correct.

5 Q And the thrust of that conversation was that
6 D'Biango would attempt to contact Jimmy Canestri?

7 A No, sir. He said he was in touch with Jimmy Canestri.

8 Q Okay. And you told him you all wanted to search
9 that room?

10 A Yes, sir.

11 Q And he said he would contact Mr. Canestri and get
12 back to you?

13 A Yes, sir.

14 Q All right. Now, you were not present in the room
15 when he then made a phone call or whatever he did to contact
16 Mr. Canestri?

17 A That is correct.

18 Q Then Mr. D'Biango came back and had a conversation
19 with you again, a second conversation?

20 A Yes, sir.

21 Q About how long after the first conversation was
22 this?

23 A Uh, I'd say within ten or fifteen minutes, sir.
24 I can't recall the exact length of time.

25 Q All right. And would it be fair to state that the

1 rest of the premises had been fully searched by that time?

2 A No, sir. I can't assume that.

3 Q You don't know?

4 A I don't know.

5 Q You had only searched the boy's, Joseph's, room?

6 A That is correct.

7 Q And you had found a syringe?

8 A That is correct.

9 Q But none of the weapons --

10 A That is correct.

11 Q -- for which you were looking?

12 A That is correct.

13 Q Now, at this time about fifteen minutes or so
14 later when you had the second conversation with Mr. D'Bianco,
15 what did he say to you and what did you say to him?

16 A He said to Jimmy the door, that Jimmy would be
17 coming shortly or something to that effect, or he would be
18 coming or he wasn't coming or something to that effect.

19 Q Now, was it shortly after that time that the door
20 was, in fact, jimmied?

21 A Yes, sir.

22 Q When you say "jimmied", you are not talking about
23 Mr. Canestri, you are talking about the lock and door were
24 somehow pried open without the use of a key?

25 A That is correct.

1 Q Who did that? Was it Mr. D'Biango?

2 A He assisted, yes, sir, I believe.

3 Q And when the door was opened, it opened into a
4 room?

5 A Yes, sir.

6 Q And in that room, sir, there were a number of
7 weapons?

8 A Yes, sir.

9 Q All right. Now, to the best of your recollection,
10 about what time was it when you got into the room? Was it
11 somewhere around nine o'clock?

12 A Approximately, yes, nine o'clock.

13 Q And you had been in the house about an hour before
14 that time?

15 A Yes, sir.

16 Q All right. Now, were you in the house until the
17 last officer left?

18 A I believe so. I can't recall.

19 Q Now, was anyone arrested that evening?

20 A To my knowledge, no, sir.

21 Q And what time was it when you left 85 Grannis Road?

22 A In the nature of twelve-thirty, quarter to one,
23 sir.

24 Q In the evening?

25 A In the morning. That is right.

1 Q In the early morning. And to your recollection,
2 everybody left with you?

3 A As far as I know, yes, sir.

4 Q All right. Now, did you ever find in that locked
5 room any of the weapons described in the search warrant that
6 you arrived there with?

7 A No, sir.

8 Q And about how many weapons were there in that room,
9 sir?

10 A Somewhere in the vicinity of 70, I would say.

11 Q And none of the 70 weapons answered the description
12 of any of the weapons for which you were searching; is that
13 correct?

14 A At the time I left the premises, that is correct,
15 sir.

16 Q Well, you say at the time you left the premises.
17 By the time you left the premises you had searched that room
18 fully for whatever, 70 weapons, were there, and you had, in
19 fact, determined that none of the weapons for which you were
20 searching were among the weapons in the room? Is that correct?

21 A That is correct, sir.

22 Q All right. Now, at any time -- I will withdraw
23 that.

24 Between the time the room was first jimmied
25 open and when you say you left close to one o'clock, were you

1 in that room most of the time?

2 A Just about, sir, yes, sir.

3 Q And were any telephone calls made while you were
4 searching that room?

5 A I was using the telephone, sir.

6 Q All right. And was the telephone upstairs?

7 A It was in close proximity to that room. Whether it
8 was inside on the wall, I can't recall.

9 Q It was in the cellar portion of the house?

10 A It was in that room, I believe, sir.

11 Q In the room?

12 A I believe it was. I can't be too sure.

13 Q Would it be fair to state you were on the phone for
14 long periods of time?

15 A Yes, sir.

16 Q Did you call Hartford?

17 A Yes, sir.

18 Q Was that the office of the Alcohol, Tobacco and
19 Firearms Division?

20 A No, sir.

21 Q What was it in Hartford that you had called?

22 A The National Crime Information Computer Center.

23 Q All right. And would it be fair to state that you
24 were going through that entire room taking down the number of
25 whatever weapon was found in the room that had any sort of

1 serial number and giving that information to the people in
2 Hartford to try and find out whether any or all of those
3 weapons were stolen?

4 A No, sir. I didn't get too far into that --
5 into the list of weapons. I did eventually run all those
6 weapons through the Crime Information Center.

7 Q When you say you did eventually run them all
8 through, would it be fair to state that you wrote down and
9 took with you when you left a full list of serial numbers of
10 every weapon in that room?

11 A I ran the first five weapons through. I could
12 only run five weapons through at a time. Among the first
13 five weapons was a stolen weapon.

14 Q Was a stolen weapon?

15 A Yes, sir.

16 Q All right. Now, when you left that night, you and
17 the other officers, would it be fair to state that you took
18 with you the three weapons which are the basis of the
19 indictment here which are allegedly automatic weapons or which
20 are capable of automatic use?

21 A When I left, I took the weapons, sir.

22 Q In addition to those three, would it be fair to
23 state that you took approximately seven other firearms with
24 you of various kinds?

25 A Approximately.

1 Q Hand guns and rifles?

2 A Approximately.

3 Q And did you also take with you a hunting knife or
4 a knife of some kind?

5 A Yes, sir.

6 Q All right. So would it be fair to state that out
7 of roughly the 70 weapons that you found in the room, you
8 left with ten or eleven of them --

9 A Roughly, sir.

10 Q -- in your possession or in the possession of
11 the other officers; is that correct?

12 A That is correct.

13 Q Now, you said that when you called Hartford, you
14 gave them the five numbers; is that right?

15 A Right, sir.

16 Q And of those five numbers -- I will withdraw
17 that.

18 You indicated that you could only give five.
19 Is that based on the fact that you can only feed five at a
20 time to the computer?

21 A No, sir. It's based on the fact that they're busy
22 and they can handle five at a time because of the backlog.

23 Q Out of those five you gave the computer, a report
24 came back that one of them had been at one time or another
25 reported as a stolen weapon; is that correct?

1 A Yes, sir.

2 Q And would it be fair to state that that weapon was
3 one of the seven or so besides the three alleged automatic
4 weapons which you and the other officers took with you when
5 you left?

6 A Yes, sir.

7 Q Now, after running those first five through, did
8 you run another five through at any other time later that
9 evening?

10 A As soon as the first five sequence went through,
11 I believe it was at this time that Mr. Canestri, James Canestri,
12 came into the room.

13 Q All right. And what happened at that point?
14 Did you have a conversation with Mr. Canestri?

15 A He was advised to open the unlocked or he was
16 advised to open the locked cabinet that was in the room.

17 Q All right. In other words, you had been in the
18 room before he arrived, but there was a portion of the room
19 that you had not yet searched?

20 A That is correct, sir.

21 Q And in response to your request, did he open the
22 cabinet?

23 A Yes, sir. He had the key to the cabinet.

24 Q All right. And what, if anything, happened after
25 he did that?

1
2 A He opened the cabinet and removed a number of guns,
3 one of which was a sawed off rifle. There was a machine gun,
4 pistols, automatic rifles that I could tell at a glance. I
5 don't know whether they were automatic or not, but they were
6 an Army type gun.

7 Q All right. Well, you say Army type gun. When you
8 say an automatic type gun, you didn't know and couldn't know
9 until they were later tested whether they were semi-automatic
10 or fully automatic; is that correct?

11 A That is correct, sir.

12 Q And you did not know that at the time you left the
13 premises with those weapons; is that correct?

14 A No. No. Of the two automatic weapons, I didn't
15 know which one or both of them were automatic or semi-automatic,
16 but I did know that the machine gun and the sawed off rifle
17 were of the type they were.

18 Q Well, you say "were of the type that they were".
19 Had you test fired the machine gun?

20 A When I say of the type they were, sir, I was
21 referring to the length of the barrel and the machine gun.
22 In other words, I could tell at a glance that it was a
23 machine gun.

24 Q All right. But you didn't test fire it?

25 A No, sir. Absolutely not.

Q And at any time you left there, sir, did you call

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1 any official connected with the Alcohol, Tobacco and Firearms
2 Division of -- I don't know whether it was the Treasury
3 Department at that time, but of the United States Government?

4 A I don't recall. On the premises I did not.
5

6 Q You did not?

7 A That is correct.

8 Q To your knowledge, did any of your fellow officers
9 call anyone from the AT&F Division?

10 A I can't recall. I wouldn't know.

11 Q Did you personally call Washington at any time
12 while you were on the premises --

13 A No, sir.

14 Q -- to check the firearms registry of the
15 United States Government?

16 A No, sir. I believe I asked them if those were
17 registered, and I believe he stated "No". I can't recall
18 that conversation too clearly.

19 Q You are not sure of that?

20 A I am not sure of that.

21 Q Now, you say that after this first call involving
22 five numbers that you gave to Hartford, you then got into
23 this locked cabinet after Mr. Canestri arrived. Did you at
24 any later time get on the telephone again and make a further
25 call or calls to Hartford with more numbers?

26 A From that point on until I left the premises, I

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1 was on the telephone.

2 Q Going through as much of the list as you could
3 before you left the premises; is that correct?

4 A That is correct, sir.

5 Q All right. And you say you left the premises
6 between 12:45 or 1:00 o'clock or so?

7 A Approximately that time, sir.

8 Q And at that time you took with you approximately
9 ten weapons?

10 A Yes, sir.

11 Q Had you had any further conversations that you can
12 recall with Mr. Canestri?

13 A No, sir. None whatsoever.

14 Q Now --

15 A Except a hunting knife, I believe.

16 Q Excuse me.

17 A A hunting knife.

18 Q You asked him about the hunting knife?

19 A Yes. He said he had a receipt for it, and I believe
20 he was looking for the receipt and he couldn't find it.

21 Q And you took that hunting knife with you?

22 A Yes, sir.

23 Q No State charges had been brought against
24 Mr. Canestri arising out of the search at his home that
25 evening; is that correct?

1 A That is correct.

2 Q Were you involved in any conversation with
3 Mr. Joseph Canestri after he arrived on the premises?

4 A No, sir. None whatsoever.

5 Q You say he arrived on the premises about what time?

6 A I can't recall that. I was on the phone, sir.

7 Q All right. Did you say earlier that that was much
8 later, that he came close to midnight by the time he came home?

9 A I don't know what time he came, sir.

10 Q Were you present at any time when the weapons
11 described in the search warrant were at 85 Grannis Road?

12 A I had no knowledge about that, sir.

13 Q All right. Did you know about it by the time you
14 left there?

15 A I knew about it by the time I left, but I was on
16 the phone and I was busy running these weapons through the
17 computer.

18 Q Were there other people present when you left?

19 A Yes, sir. Yes, sir.

20 Q In other words, officers were still there when you
21 left?

22 A No. No.

23 Q Okay.

24 A Others were present.

25 Q In other words, the Canestri's were present and

1 friends of the Canestri's?

2 A That is right.

3 Q But no police officers were present when you say
4 you left close to one o'clock?

5 A To my knowledge, I don't recall.

6 Q And you say that you didn't get through the entire
7 list by the time you left there?

8 A I completed the list by the time I left.

9 Q So you stayed long enough to run the whole list
10 through and then left; would that be fair to state?

11 A That is correct.

12 Q And none of the weapons that you took with you were
13 test fired before you left; is that correct?

14 A That is correct, sir.

15 Q Did you have any conversations with Mr. D'Bianco
16 that you can remember other than what you have told us?

17 A No, sir.

18 Q And you indicated that you had no conversations
19 with Mr. James Canestri, the defendant, other than what you
20 have told us?

21 A That is correct.

22 Q Did you have any conversations at all with the
23 defendant's brother, Joseph Canestri?

24 A No, sir.

25 Q Did you have any conversations of any significance

1. that you can remember other than what you have told us with
2. Mr. Canestri's mother?

3. A No, sir.

4. Q Did anybody else, not a police officer, come on the
5. premises that you can recall other than the people you have
6. mentioned?

7. A I believe his uncle and aunt were there.

8. Q Mr. Canestri's uncle and aunt?

9. A Yes. I believe so.

10. Q Do you recall when it was when they arrived?

11. A No, sir. I don't. I just knew they were there.

12. MR. GRUBBERG: One moment, please, Your Honor.

13. Q You had nothing to do or you were not one of the
14. officers who swore out the warrant?

15. A That is correct, sir.

16. Q Showing you Government Exhibit 1, Sergeant Rubino,
17. showing you the back page thereof, there is what purports to
18. be an inventory, a return, an inventory of property seized.

19. A That is correct.

20. Q Is that, in fact, all of the property which you
21. took with you on that night?

22. A That is correct.

23. Q Now, on anything other than what you claim was an
24. automatic weapon, would all of the other weapons on that list
25. be weapons that you had learned based upon your calls to

1 Hartford had at one time or another been reported as stolen?

2 A That is correct.

3 Q Yes?

4 A That is correct, sir.

5 Q And the knife was taken why, because he couldn't
6 come up with the receipt for it?

7 A Plus the fact that the computer gave me information
8 on the model number as being stolen.

9 Q That the knife --

10 A The model number of the knife was reported stolen.
11 The model number of the knife.

12 MR. GRUBBERG: I have nothing further
13 of this witness.

14 THE COURT: Mr. Maxwell.

15 CROSS EXAMINATION

16 BY MR. MAXWELL:

17 Q Sergeant Rubino, were you a Sergeant in October of
18 1972?

19 A No sir. I wasn't.

20 Q At that time you were a patrolman?

21 A Yes, sir.

22 Q Now, to run through the time sequence briefly,
23 I believe you stated that you and the other officers arrived
24 at the premises at 8:00 P.M.?

25 A That is correct, sir.

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- 1 Q And the warrant was presented to Mrs. Canestri?
2 A That is correct, sir.
3 Q And a search of the premises then commenced?
4 A Yes, sir.
5 Q Now, was the entire upstairs of the premises
6 searched by yourself?
7 A No, sir.
8 Q Now, did you search a portion of the premises?
9 A Yes, sir.
10 Q And were you accompanied by anyone during that
11 search?
12 A Yes, sir. I was.
13 Q And who was that?
14 A Sergeant Cybart.
15 Q And was he a Sergeant at that time?
16 A No. He was not, sir.
17 Q And where was Mrs. Canestri?
18 A She came into the room at one time or another, but
19 she may have been in conversation with the other officers,
20 but she was up in the house at the time.
21 Q I see. This room you are referring to is which
22 room?
23 A The son's bedroom, sir.
24 Q Which son is that?
25 A Joey's, I believe, sir.

1 Q And is this the room that you subsequently gained
2 entrance to?

3 A Yes, sir.

4 Q And the rest of the basement, how was that
5 furnished? Was it a recreation room?

6 A Yes. It was a recreation type of room.

7 Q And Mrs. Canestri made a statement to the effect
8 that it was the kid's room downstairs?

9 A That is where the kid's -- she said that
10 was the kid's room.

11 Q Did she say kid's possessive or kids plural?

12 MR. GRUDBERG: Objection, if the Court please.

13 He has already testified the impression he got was it
14 was James' room.

15 THE COURT: Sustained.

16 MR. MAXWELL: Well, if the Court please --

17 THE COURT: Well, he can just tell us what
18 the conversation was. I have yet to see a conversation
19 that has commas and possessive marks verbally.

20 BY MR. MAXWELL:

21 Q Now, Officer, the room to which you gained entrance
22 to, would you describe that room as to its size and width and
23 what it contained?

24 A All right. The room was approximately the width
25 of the basement or is the width of the basement in length.

1
2 The width was approximately twelve to possibly fourteen
feet wide.
3

4 Q And there was a door which prevented you from
gaining entrance to this?
5

6 A That is correct, sir.
7

8 Q Now, subsequent to some telephone conversation
with Mr. James Canestri, entrance was gained to this room;
is that correct?
9

10 A That is correct, sir.
11 Q And Mr. Carl D'Biango assisted you in gaining
entrance?
12

13 A That is correct, sir.
14 Q ~~And when the door to this room was opened, was there~~
anything on the door?
15

16 A Yes, sir.
17

18 Q What was on the door?
19

20 A A poster. A Hell's Angels, I think it was, a
poster on the door.
21

22 Q Do you have a photograph of it?
23

24 A Yes. I do, sir. (indicating)
25

MR. GRUDBERG: Do you want to offer it?

MR. MAXWELL: Yes.

MR. GRUDBERG: I have no objection to it.

THE COURT: All right. Exhibit 3.

(Photograph received and marked Government)

Exhibit 3.)

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1 BY MR. MAXWELL:

2 Q Now, Sergeant Rubino, showing you Exhibit 3, you
3 referred to a poster which is shown on the left side of this
4 photograph with the words "Hell's Angels Grateful Dead". Is
5 that the poster you are referring to?

6 A That is correct.

7 Q Now, the other portion of that photo, does that
8 show a portion of the interior of this room?

9 A That is correct, sir.

10 Q And is that the way it appeared on that evening?

11 A That is the way it appeared on that evening.

12 Q Were these photographs taken on that evening?

13 A Yes. They were.

14 Q Now, Sergeant Rubino, what did you observe --
15 question withdrawn.

16 Did you enter this room after the door was
17 opened?

18 A Yes, sir.

19 Q Were you the first one into the room?

20 A One of the first, yes.

21 Q And what did you observe immediately upon entering
22 the room?

23 A All the guns. The amount of guns that were in the
24 room.

25 Q And for how long have you been a police officer?

1 A Fourteen years, sir.

2 Q And Sergeant Rubino, are you familiar with any
3 motorcycle gangs in the New Haven County, Orange area?

4 A I know of them, sir.

5 Q Are you familiar with the term "Hell's Angels and
6 Grateful Dead"?

7 A Yes, sir.

8 Q Have you participated in any investigation of
9 numerous burglaries for stolen weapons?

10 MR. GRUDBERG: I object. It's totally
11 irrelevant.

12 THE COURT: How would this be relevant?

13 MR. MAXWELL: Your Honor, showing the
14 officer's state of mind when he walks into the room
15 containing numerous weapons.

16 THE COURT: Well, ask him rather than lead
17 him.

18 BY MR. MAXWELL:

19 Q Officer Rubino, what was your state of mind when
20 you walked into this room with all these weapons?

21 A Well, it was a room strictly with guns. It looked
22 like an arsenal.

23 Q Was there any machinery in the room?

24 A There were tool boxes, tools and loading equipment
25 for loading shells and things of that nature.

1 Q Now, after you entered the room, what did you do?

2 A I went to the wall to my left. There was a rack
3 containing approximately thirty weapons on that rack.

4 Q And what did you do with those weapons, if anything?

5 A I went to the telephone and called the Computer
6 Center in Hartford, and I commenced to run the first five
7 weapons through the computer.

8 Q Were you checking the weapons on the wall against
9 the weapons listed in the warrant also?

10 A Yes, sir. As I went through it.

11 Q Now, I believe you said you went through approximately
12 five weapons?

13 A Approximately five weapons, sir.

14 Q And then Mr. Canestri arrived on the scene?

15 A Yes, sir. He did.

16 Q Now, were there cabinets in this room?

17 A Yes, sir.

18 Q Were they locked?

19 A Yes, sir.

20 Q Did Mr. Canestri open these cabinets?

21 A When he came into the room, yes, sir, he opened
22 the cabinet directly in front in this photograph (indicating).

23 Q And were you going to search those cabinets for
24 the weapons named in the warrant?

25 A Yes, sir. That is correct.

1 Q And the weapons known as the AR-15's, the German
2 machine gun and the short barrel rifle, were these weapons
3 found in any one of those cabinets?
4

5 A Yes, sir.
6

7 Q Was this a cabinet which Mr. Canestri opened?
8

9 A That is correct, sir.
10

11 Q And approximately at what time were these weapons
12 found?
13

14 THE COURT: Now, just a moment. Is that the
15 weapon set forth in Count One, AR-15?
16

17 MR. MAXWELL: Yes, Your Honor. That would
18 be one of the weapons I am referring to.
19

20 THE COURT: All right. So, in other words,
21 the weapons that were the subject matter of the search
22 warrant were not found, but all the weapons named in
23 the indictment were found?
24

25 MR. MAXWELL: At that time.
26

27 THE COURT: All right.
28

29 BY MR. MAXWELL:
30

31 Q Now, Sergeant Rubino, what did you do, if anything,
32 with regard to the three weapons which were named in the
33 indictment at that time?
34

35 A I seized those, sir.
36

37 Q And did you thereafter commence a search of the
38 cabinets for the weapons named in the search warrant?
39

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1 A That is correct, sir.

2 Q And for how long after having seized the weapons
3 named in the indictment did you search the room for the
4 weapons named in the search warrant?

5 A I didn't take part in the rest of the search. I
6 went to the telephone and immediately processed these
7 weapons. I did not participate in the following search.

8 Q Did you observe any other police officers going
9 through the cabinets?

10 A Yes, sir. That is correct.

11 Q Were there trunks in the room also?

12 A Yes, sir.

13 Q Did you observe those being searched?

14 A Yes, sir. From time to time.

15 Q Now, with reference to the three weapons that are
16 named in the indictment, are you familiar with what is
17 commonly known as a short barrel rifle?

18 A Yes, sir.

19 Q Is this through your police training?

20 A Yes, sir.

21 Q And do you have some knowledge as to whether or
22 not they may be legally possessed by anyone?

23 MR. GRUDBERG: Well, all right. I withdraw
24 that.

25 THE WITNESS: Mere possession of a weapon

1 unless it is registered is contraband.

2 BY MR. MAXWELL:

3 Q And what about the machine gun?

4 A That I seized also.

5 Q And what about the AR-15's?

6 A Yes, sir. I took both of those.

7 Q Are you familiar with the possibility of an AR 15
8 being an automatic weapon?

9 A There was a switch on it that indicated that. I
10 am not too familiar with it.

11 Q When you say "switch", are you referring to the
12 selector switch? You observed this?

13 A That is correct.

14 Q Now, Sergeant Rubino, I believe you indicated that
15 you may have had a conversation with Mr. Canestri concerning
16 whether or not these weapons were registered.

17 A Yes, sir. I can't recall the exact conversation
18 or his answer. I can't recall it.

19 Q And by registration, what registration are you
20 talking about?

21 MR. GRUDBERG: Objection, if the Court
22 please. If he can't recall the conversation. He said
23 it twice now. He can't recall. If he can't recall
24 the conversation, it doesn't matter what he is not
25 recalling.

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1
2 THE COURT: Yes. What inferences can I
3 draw from that regardless of what he says?

4 MR. MAXWELL: I won't press it.

5 BY MR. MAXWELL:

6 Q Now, Sergeant Rubino, other than the jimmying of
7 the door, do you know whether any damage was done to the
8 premises known as 85 Grannis Road during this search?

9 A No, sir. To my knowledge, no, sir.

10 Q Was there any general rummaging around throughout
11 the rest of the house?

12 A No, sir. Not to my knowledge.

13 Q Did Mrs. Canestri make any complaints to you about
14 damage or rummaging?

15 A No, sir.

16 MR. MAXWELL: I don't believe I have anything
17 further.

18 THE COURT: Redirect?

19 MR. GRUDBERG: If the Court please. I
20 neglected to do this before.

21 REDIRECT EXAMINATION

22 BY MR. GRUDBERG:

23 Q Is this your report on this incident, Officer Rubino?

24 A This was comprised by Sergeant McLean, sir.

25 Q Does this just consist of photographs?

A No, sir.

1.

— MR. CRUDBERG: Might I see it, if the Court
2 please?

3.

BY MR. CRUDBERG:

4.

Q Sergeant Rubino, when you went there -- I will
5 withdraw that.

6.

You indicated that you personally had not
7 prepared the affidavit for this search warrant; is that correct?

8.

A That is correct, sir.

9.

Q Would it be fair to state, however, that you knew
10 what the search warrant was all about at the time you went
11 there?

12.

A Yes, sir.

13.

Q You knew that there had been this burglary at the
14 Mezzinotti home in Orange a few days before?

15.

A I knew we were going in there for stolen weapons,
16 antique stolen weapons.

17.

Q Antique stolen weapons. All right. And you knew,
18 did you not, that these were antique stolen weapons supposedly
19 in the possession of Joseph Canestri?

20.

A I didn't know, sir. I did not know that, sir.

21.

Q Did you at any time see any copy of that warrant
22 before you went there?

23.

A No, sir. I did not.

24.

Q Well, didn't any of the other officers with whom
25 you went tell you that this search involved supposedly the

1 teen-age Canestri boy and his alleged possession of --

2 A I had no conversation with these people whatsoever.

3 Q You didn't know that. Well, did you have any
4 understanding -- I will withdraw that.

5 You knew when you arrived there or after you
6 arrived there that Mr. James Canestri did not live on those
7 premises, didn't you?

8 A When I got there?

9 Q You were told that by Mrs. Canestri?

10 A Yes. She indicated that he had this room in the
11 basement. That is all I knew.

12 Q That her son, James, had a room in the basement;
13 is that correct?

14 A Yes, sir. The way she phrased the question, it
15 was the kid's room. Now, I don't know what she meant by that.

16 Q But she did indicate to you her son who didn't live
17 on the premises had this locked room in the basement, didn't
18 she?

19 A This is what she said.

20 Q And he kept certain items in there of his, isn't
21 that right?

22 A I can't infer that.

23 Q Well, she did tell you that she didn't even have in
24 her possession a key to get in that room?

25 A Yes, sir. That is correct.

1

2 Q And she did indicate that there was not even in
3 the whole house, to her knowledge, a key to get into that
4 room?

5

A I didn't hear that. I didn't hear that conversation
at all, sir.

6

Q She told you --

7

A She told me there wasn't any key on the premises.
She said she had no key on the premises.

8

Q And then, apparently, at some time afterwards
Mr. Carl D'Biango arrived?

9

A He was there when I got there.

10

Q Isn't it true that he indicated to you and the
other officers that were with you that that room contained
items belonging to Mr. James Canestri?

11

A I didn't have that conversation with him. I
didn't have any conversation with the man.

12

Q Did he tell you that he was in contact with the
defendant, James Canestri?

13

A That is correct, sir.

14

Q And didn't he tell you that it was the defendant,
James Canestri's, room, in effect?

15

A I didn't have conversation with him regarding that,
sir. I merely had conversation regarding the fact that he
said that Jimmy would be down shortly, that he would open the
door or he wasn't coming down to open the door and that we

1 could jimmy the door and get into the room.

2 Q Well, first, you had a conversation with him about
3 the fact that here was this room with a lock on it; is that
4 correct?

5 A That is correct.

6 Q And you could not get into it?

7 A Right, sir.

8 Q And didn't he, in fact, indicate to you that he
9 wanted to contact James Canestri concerning how to get in that
10 room or whether James could come down and open it for you?

11 A It's possible his mother spoke with the boy. I
12 don't know.

13 Q I am asking what he indicated to you, sir.

14 A He would get into the room with us. He would make
15 arrangements to get into this room.

16 Q And he didn't indicate in the first conversation
17 what arrangements he was going to make?

18 A No.

19 Q And he went away and, apparently, made a phone call?

20 A Evidently.

21 Q And then he came and told you that Jimmy Canestri
22 was coming down?

23 A Right.

24 Q And that Jimmy had said to open the door in his
25 absence; is that correct?

1 A Correct, sir.

2 Q So it would be fair to state, wouldn't it, sir,
3 that you knew when you went into the room that it was,
4 apparently, Jimmy Canestri's room both from Jimmy's mother
5 and from Mr. D'Biango?

6 A I didn't know whose room it was, sir.

7 Q All right. When you went into the room, you
8 indicated a short time thereafter that James Canestri arrived?

9 A That is correct, sir.

10 Q And Mr. Maxwell asked you whether you were going to
11 search that cabinet; is that correct?

12 A Yes, sir.

13 Q And you said "Yes"?

14 A Yes, sir.

15 Q And you were going to search the cabinet whether
16 Mr. Canestri opened it for you or not; isn't that correct?

17 A Absolutely.

18 Q You told him to open it, more or less, you didn't
19 want to break it open if you didn't have to?

20 A Absolutely.

21 Q But he didn't really have any choice in that matter
22 as to whether or not that cabinet was about to be searched,
23 did he?

24 A That is right, sir.

25 Q And by the time that cabinet was opened, you had

1 looked around the room; is that correct?

2 A Roughly, yes, sir.

3 Q And you said that room looked to you like an
4 arsenal?

5 A That is correct.

6 Q That room was not filled with a bunch of antique
7 weapons, was it?

8 A I can't -- I didn't -- I didn't get into
9 the search. I couldn't tell that until I started to look.

10 Q All right. You went in and you started to look;
11 isn't that correct?

12 A Right.

13 Q You went over and took down the numbers off the
14 first five guns?

15 A First five.

16 Q And this was a rack of about thirty weapons; isn't
17 that correct?

18 A Roughly, yes, sir.

19 Q And those were, you say --

20 A All types of guns, sir.

21 Q Hand guns and --

22 A No. Rifles.

23 Q These were all rifles?

24 A To my knowledge, yes, sir, and there were weapons,
25 there were hand guns in different areas of the room.

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CERTIFIED STENOTYPE REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

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905 CHURCH STREET
NEW HAVEN, CONNECTICUT

1 BY MR. GRUDEBERG:

2 Q You indicated that it was a selector switch on
3 the AR-15?

4 A Yes.

5 Q The AR-15 is a sporting rifle, isn't that correct?

6 A I have no knowledge of that.

7 Q Do you know whether or not the AR-15 is the
8 sporting model of the military M-16 which is fully automatic?

9 A These are the two weapons. If it is a sporting
10 model, I don't know, sir.

11 Q And you didn't know when you were there?

12 A I knew that these weapons were Army type weapons,
13 and I ran these things through the same computer as the rest
14 of the weapons.

15 Q All right. Now, the ones that were Army type
16 weapons that you thought might be automatic, you weren't an
17 expert on automatic weapons, were you?

18 A That is correct.

19 Q And you weren't really sure when you left there
20 whether they were automatic weapons or not?

21 A That is correct.

22 Q They looked like them to you; is that correct?

23 A That is correct.

24 Q And they hadn't been test fired?

25 A That is correct.

1 Q And as far as automatic weapons are concerned, you
2 were really acting almost as a layman, you were not an expert
3 on automatic weapons; is that correct?

4 A That is correct, sir.

5 MR. GRUDEBERG: I have nothing further.

6 EXAMINATION BY

7 THE COURT:

8 Q Mr. Rubino, could you give me some idea of the
9 amount of time it took you to take down the serial numbers
10 of all these 70 weapons and put them through the computer in
11 Hartford and obtain an answer from the computer in Hartford?

12 A The length of time it took me to -- approximately
13 9 o'clock to approximately quarter to one, twelve-thirty.

14 Q In other words, it is your testimony that the
15 reason you were on the premises from 9 until 1 or quarter to
16 1 was because you were on the phone checking each and every
17 one of the serial numbers; is that it?

18 A That is correct, sir.

19 Q Okay. Now, just for my own edification, when you
20 called up Hartford and got in touch with the Center, did
21 someone answer the phone, a clerk of some type?

22 A Right, sir.

23 Q And then --

24 A I proceed to identify myself, my Department, and I
25 tell them what I am seeking, I would like to run the following

1 weapons through the N.C.I.C. computer on a stolen check.
2

3 Q And they, I assume, say "What are the serial
4 numbers?"

5 A That is correct, sir.

6 Q And you read them off?

7 A I give them five at a time.

8 Q Right. And then what happens? Do you stay on
9 the phone?

10 A That is correct, sir. They will give me an
11 answer on the five.

12 Q All right. So I take it that after you give the
13 five serial numbers, you stay on the phone and wait a period
14 of time?

15 A Absolutely, sir.

16 Q And then the clerk comes back and says "Serial
17 Number 1 . . ." and so forth ". . . is okay"?

18 A Right.

19 Q "2 is okay. 3 is okay. 4 is reported stolen."

20 A Right, sir.

21 Q "5 is okay. "

22 A Right, sir. That is correct.

23 Q Then did you hang up?

24 A No, sir. I proceed to give him five more and I
25 wait a period of time again, and so it takes quite a while to
do this.

1 Q Okay. And it is your testimony that it took from
2 the time you started to a quarter to one or in that area?

3 A Roughly, sir, that is correct.

4 Q All right. Now, one other question. You said
5 all the weapons that you took were reported stolen; is that
6 correct?

7 A No, sir. I took seven of them, I believe.

8 Q Yes.

9 A They were reported stolen.

10 Q That is what I am saying. All the weapons you
11 took, you seized --

12 A That includes the -- that does not include the
13 automatic weapons, Your Honor. That does not include this
14 one, this one (indicating).

15 Q Then let me go over it. When you walked out of
16 the Canestri home, what did you have in your possession?

17 A Eleven items.

18 Q Oh, eleven items, not seven?

19 A Yes. One of which was a hunting knife, sir.

20 Q Okay. So we had eleven items, one of which was a
21 knife?

22 A That is correct, sir.

23 Q Of those eleven items, how many had been reported
24 stolen?

25 A Seven, sir. Let me check.

1 Q And does that include the knife model number?

2 A Yes. That includes the hunting knife, sir.

3 Q All right. Now, that leaves us with four items.

4 A That is correct, sir.

5 Q Now, why did you take the four items?

6 A One was the sawed off rifle, sir, that I recognized
7 right away because of the shortness of the gun, and the
8 machine gun I wasn't sure of as to whether or not that was
9 contraband or whether it was registered. I had no knowledge
10 of this. I checked that weapon to find out if the weapon
11 was stolen at the beginning.

12 Q And there was no report that it was stolen?

13 A That is correct, sir.

14 Q So we have the sawed off shotgun or rifle, the
15 machine gun --

16 A And the two automatic weapons.

17 Q All right. Now, of those four items, was one a
18 Colt AR-15 model 614 automatic rifle?

19 A You say Colt AR-15?

20 Q Yes.

21 A Automatic rifle, one of them was.

22 Q Okay. Was another a German MP 40 machine --
23 pistol?

24 A Yes, sir.

25 Q Okay. That's two. And was the third a Marlin

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1 Model 75 22 caliber short barreled rifle bearing no
2 serial number?

3 A There was a serial number on that one, sir.

4 Q There was a serial number on that one?

5 A Yes, sir.

6 MR. GRUDBERG: I think that is the same one
7 named in the indictment, if the Court please, because
8 that was the only Marlin 75 taken. Perhaps that serial
9 number was erased later.

10 BY THE COURT:

11 Q Which of the four items that you took from the
12 Canestri home have I not mentioned to you just now? Which one
13 did I leave out?

14 A There was another automatic rifle that at a later
15 point, the following morning, I called Mr. Peterson from ATF
16 to ascertain if that was an automatic rifle, and it was not.

17 Q I see. All right. Now, let's get to that. To
18 your knowledge or with your experience in the field limited
19 as it may be, was there a way that you could call Washington
20 to decide whether any one of these weapons such as the
21 machine gun was registered in the National Firearms Registration
22 and Transfer Record?

23 A Absolutely not, sir.

24 Q You know for a fact that you could not at that time
25 of night?

1 A No, sir. There is no way.

2 Q Now, at any point, did you check to see if they
3 were registered?

4 A The following morning, sir.

5 Q How did you do that?

6 A I called Mr. Peterson from the Alcohol, Tobacco
7 and Firearms, and he came to the station and he checked it
8 I believe.

9 Q All right. Do I take it that the National Firearms
10 Registration and Transfer Record Agency is a Federal Agency?

11 A Yes, sir. It is.

12 Q And the Agency you called in Hartford is an
13 agency available to State and local police; is that your
14 knowledge?

15 A Yes, sir.

16 Q This agency in Hartford, do they check other things
17 besides guns?

18 A Yes, sir. Stolen property in general.

19 Q Cars?

20 A Stolen vehicles. You have to specify which you
21 are looking for. Missing persons, wanted persons, anything
22 of this nature.

23 Q I see.

24 MR. GRUDBERG: That is the F.B.I. computer
25 system. In effect, N.C.I.C.

1 THE WITNESS: That is correct.

2
3 MR. GRUDBERG: When people are arrested,
4 if you get a new arrest and you send in the fingerprints
5 and so forth, that is the same outfit that will come
6 right back and tell you he is wanted in Oakland or
7 something like that?

8 THE WITNESS: Yes. If I contact the
9 computer center, right.

10 BY THE COURT:

11 Q Yes. But as much as that computer does, it would
12 not answer whether or not a weapon was registered or not?

13 A No. There is no way.

14 THE COURT: Thank you, Mr. Rubino.

15 MR. GRUDBERG: I have nothing further.

16 MR. MAXWELL: Excuse me, Your Honor. There
17 is just one point.

18 RECROSS EXAMINATION

19 BY MR. MAXWELL:

20 Q Sergeant Rubino, while you were spending your time
21 at the premises checking for the weapons, did you come to
22 know that the other officers there had some other side deal
23 working with Joseph Canestri --

24 A I had some inclination.

25 Q -- concerning antique guns?

A Yes, sir. That is correct.

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1 THE COURT: How did you know that? Did
2 you hear it?

3 THE WITNESS: Yes. In between the time
4 of waiting on the phone and different considerations
5 about somebody coming down, then where the guns are
6 or something like that.

7 THE COURT: Oh, it was hearsay?

8 THE WITNESS: No. Somebody talking over
9 my shoulder, stating that somebody will be down in a
10 few minutes, then where the guns are, they are going to
11 get the guns. So what I am getting at is in the course
12 of the night, you do hear conversation over and above
13 what is going on on the phone.

14 THE COURT: Yes. I know that, but you
15 yourself didn't talk to Joseph?

16 THE WITNESS: No, sir. I did not.

17 THE COURT: And you did not overhear the
18 so-called deal?

19 THE WITNESS: No, sir. Absolutely not.

20 THE COURT: Since you were asked without
21 objection, I will ask this: When it was mentioned to
22 you about antique guns, do you mean the guns that were
23 named in the warrant?

24 THE WITNESS: That is correct, sir.

25 THE COURT: Okay. Thank you, Mr. Rubino.

1
2
3 MR. GRUDBERG: Detective Fumiatti.
4

5 V I N C E N T F U M I A T T I , called as a
6 witness, having been first duly sworn,
7 testified on his oath as follows:
8

9 THE CLERK: Would you, please, state your
10 name and address for the record?
11

12 THE WITNESS: Detective Vincent Fumiatti,
13 F-u-m-i-a-t-t-i. New Haven Police Department.
14

15 DIRECT EXAMINATION
16

17 BY MR. GRUDBERG:
18

19 Q Detective Fumiatti, you indicate you are employed
20 by the New Haven Police Department?
21

22 A Yes, sir.
23

24 Q In October of 1972, were you assigned to any
25 regional police force or the regional crime squad which was
a cooperative venture among the New Haven Police Force and
others?

26 A Yes, sir. And I still am.
27

28 Q In connection with those duties on the so-called
29 Regional Crime Squad or Crime Force, did you go with other
30 officers of the Orange Police Department to the home of
31 Josephine Canestri at 85 Grannis Road in Orange on
32 October 19, 1972?
33

34 A Yes, sir. I did.
35

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1 Q And with whom did you go?
2 A I went with Chief Foyer, Officer Rubino and
3 Officer Cybart.

4 Q And at any time later that evening, did
5 Sergeant McLean and Sergeant Blackman arrive?

6 A Yes.

7 Q Do you recall about what time you got to the
8 premises?

9 A Approximately 8 P.M.

10 Q And do you recall what time it was approximately
11 that McLean and Blackman arrived?

12 A No, sir. I do not.

13 Q When you arrived there, do you recall whether you
14 went in the front door or back?

15 A I went in the back door, sir.

16 Q And was Mrs. Canestri the only person in the house
17 at that time?

18 A Yes. She was.

19 Q And did you have any conversation with her?

20 A No, sir. Other than identifying myself, I did not
21 have anything --

22 Q Were you present when Officer Rubino showed her
23 the Warrant or gave her a copy of the Warrant, identified who
24 he was and what you all were doing there?

25 A Right.

1 Q And subsequent to that, did you, in fact, along
2 with the others begin to search the premises?

3 A Yes, I did, sir.

4 Q And do you recall what portion or portions of the
5 premises you specifically searched?

6 A Well, upstairs first, I believe we went to a
7 bedroom that was identified as Joseph's room which is one of
8 her son's.

9 Q Now, when you say "identified as Joseph's room",
10 was that so identified to you by Mrs. Canestri?

11 A Yes.

12 Q Did you ask her where Joseph's room was?

13 A I believe we did, sir. I am not sure.

14 Q Had you read the affidavit upon which the Warrant
15 was issued before you went there?

16 A Yes, I did, sir.

17 Q And you knew that it was alleged that Joseph
18 Canestri was involved somehow in either the possession of
19 recently stolen antique pistols or might well be in possession
20 of them at that time; is that correct?

21 A Yes, sir.

22 Q All right. And you knew that Joseph Canestri lived
23 at these premises with his mother?

24 A Yes, sir.

25 Q All right. And when you arrived there, it would

1 be fair to state that you or other officers in your presence
2 asked Mrs. Canestri where Joseph's room was; is that right?
3

4 A Right.

5 Q And you indicated that you and perhaps another
6 officer searched that room?

7 A Yes, sir.

8 Q And was a syringe or a set of works found in the
9 room?

10 A I believe there was, sir.

11 Q Were any antique pistols of any kind found in the
12 room?

13 A No, sir. There was not.

14 Q Besides the syringe, was anything else found in
15 the room that you took into your possession or any of the
16 other officers took into their possession at any time?

17 A There was mention of a little marijuana found, but
18 I don't recall how much.

19 Q You don't recall?

20 A No.

21 Q You indicated that Josephine Canestri was at home
22 alone when you arrived?

23 A Yes.

24 Q Did there come a time sometime after that when
25 someone else arrived?

26 A Yes. There was.

1 Q All right. Was this a fellow named Carl D'Biango?
2 A Right. I didn't know him at the time. I didn't
3 know him before.

4 Q Someone you learned to be Carl D'Biango?
5 A Yes.

6 Q When did he arrive? A half hour or an hour after
7 you all arrived?

8 A Well, I would say maybe a half an hour to forty
9 minutes, sir.

10 Q Do you know how he got there or why he came? If you
11 know?

12 A No, sir. I do not.

13 Q Were you present at all when Mrs. Canestri made any
14 phone call to anyone after you arrived?

15 A I don't recall her making any, sir.

16 Q Now, when Carl arrived, Mr. D'Biango arrived, at
17 any time were you in his presence, did you have any conversation
18 with him?

19 A I believe I was in the basement at the time he
20 came down.

21 Q Okay. Now, at the time you went down the basement,
22 would it be fair to state that you and the other officers had
23 fully searched the upstairs portion of the premises?

24 A I believe that some of the officers were still
25 searching upstairs, and I just went downstairs to begin

1 searching the cellar area.
2

3 Q All right. To your knowledge, was anything other
4 than the syringe found upstairs at any time?
5

6 A I don't know, sir.
7

8 Q You don't know?
9

10 A No.
11

12 Q The entire premises were searched though?
13

14 A Yes.
15

16 Q And then you came downstairs to the basement and
17 you were in the process of either beginning to or searching
18 the basement premises?
19

20 A Yes, sir.
21

22 Q In part of the basement premises there was some sort
23 of recreation room or finished basement area?
24

25 A Yes.
26

27 Q And did you search that portion of the premises?
28

29 A Yes, I did, sir.
30

31 Q And at some time while you were down there,
32 Carl D'Biango came down?
33

34 A Yes.
35

36 Q And you had a conversation with him?
37

38 A I believe -- you know, just to state who he was
39 and that's about all I can remember.
40

41 Q He told you who he was?
42

43 A I believe so. Yes, sir.
44

1 Q Had Joey Canestri arrived home by that time?

2 A No, sir.

3 Q Now, was there any conversation between yourself or
4 the other officers and Mr. D'Biango concerning a room in the
5 basement portion of the house which appeared to be locked?

6 A Yes, sir. There was a conversation about that.

7 Q All right. And did he indicate to you that --
8 first of all, did he indicate to you he was a friend of
9 James Canestri?

10 A Yes, he did. A friend of the family, I think he
11 put it.

12 Q Did he indicate to you that that was the room that
13 James Canestri used?

14 A I don't recall that, sir.

15 Q Do you recall any conversation with Mrs. Canestri
16 concerning that room?

17 A I believe she stated that that was her son, Jimmy's
18 room, she had never been in it, or something to that effect.

19 Q And did she indicate to you she didn't even have
20 a key to it?

21 A Yes. She did.

22 Q And Jimmy used the room for his own purposes; is
23 that right?

24 A Right.

25 Q At the time you spoke to D'Biango, you had heard

1 from Mrs. Canestri, according to her that was her son,
2 Jimmy's room; is that right?

3 A Yes.

4 Q Did you ask him any questions concerning how that
5 room might be entered?

6 A I don't recall asking him that question, sir.

7 Q Did any of the others ask a question, either in
8 substance or in fact, to that effect of Mr. D'Biango?

9 A The first time we met him?

10 Q Yes.

11 A I don't recall asking him how we can enter the
12 room.

13 Q Well, was there any discussion about that room the
14 first time you saw him -- I will withdraw that.

15 Did you indicate to him that you wanted to
16 get into the room?

17 A Oh, yes. Yes.

18 Q You indicated to him that you had talked to
19 Mrs. Canestri about getting into the room and she indicated
20 she didn't have a key?

21 A Right.

22 Q And did he indicate to you that he would check
23 with Jimmy Canestri to see whether he could get him there
24 or get a key to open the place?

25 A Yes. He said he would call him on the telephone.

1
2 Q All right. And were you present when he made the
3 call?
4

5 A Yes. I was.
6

7 Q All right. And you heard at least his end of the
8 conversation?
9

10 A Right.
11

12 Q And, in fact, did you hear him tell who appeared
13 to be Jimmy Canestri at the other end of the phone that there
14 were a bunch of police officers here and they were searching
15 the house?
16

17 A Yes.
18

19 Q And that they wanted to search his room in the
20 basement; is that correct?
21

22 A Yes.
23

24 Q And did he indicate to Jimmy that they were having
25 difficulty because the place was locked --
26

27 A Right.
28

29 Q -- from what you heard on his end of the conver-
30 sation?
31

32 A Right.
33

34 Q All right. Now, subsequent to that, did he tell
35 you that Jimmy wouldn't be able to be there for a couple of
36 hours or for some period of time?
37

38 A I don't believe it was a couple of hours, but it
39 was a short period of time.
40

1
2 Q Did he indicate Jimmy was baby-sitting and couldn't
3 leave immediately?
4

5 A I don't know about if he was baby-sitting, but he
6 just said it would take him 45 minutes to an hour or so to
7 get there.
8

9 Q There was a suggestion since he wouldn't be able
10 to be there right away, you should force the door open as
11 gently as possible?
12

13 A Right.
14

15 Q And that was done?
16

17 A Yes, it was.
18

19 Q And did you have any part in accomplishing that?
20

21 A No, sir. I don't believe so. I think it was
22 Officer Rubino and Chief Foyer and Carl. I think they helped
23 open the door.
24

25 Q You were standing around?
26

27 A Right.
28

29 Q By this time the rest of the house had been
30 searched; would that be fair to state?
31

32 A Well, there was a very large cellar, and I believe
33 our interest was when we found the door locked to go in there.
34

35 Q Notwithstanding the fact that you had been told
36 that it was James Canestri's room?
37

38 A Well, it was just a locked room when we got there.
39

40 Q Now, when the door was opened, you went in?
41

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1 A To the room?

2 Q Yes.

3 A Yes.

4 Q And about what time was that? About 9 o'clock?

5 It was about an hour after you arrived?

6 A Yes, sir.

7 Q Did you leave with the others?

8 A Did I leave what?

9 Q Did you leave the premises at 85 Grannis Road --
10 when you finally left at the end of the evening, did you leave
11 with the others?

12 A Yes, I did, sir.

13 Q When was that? About two or three in the morning?

14 A It was approximately 1 A.M. or a few minutes
15 before that.

16 Q All right. Now, do you recall about what time it
17 was when Joey Canestri arrived that evening?

18 A The first time?

19 Q The first time.

20 A I would venture to say somewhere around 9:45 P.M.,
21 quarter to ten, in around that area.

22 Q You had been there fairly close to two hours; is
23 that correct?

24 A Yes.

25 Q And about what time was it that Jimmy Canestri

1
2 arrived, if you can recall?

3 A He arrived around 9:30, I believe.

4 Q Shortly before his brother?

5 A Yes.

6 Q Did you have any conversations with Jimmy when he
arrived?

7 A Yes. I did.

8 Q And would you tell us what you said to him and
what he said to you?

9 A I was down in the basement and he came down and I
10 identified myself to him, showed him my identification and
11 advised him that we had a Warrant here and what we were
12 looking for.

13 Q And when you say "what you were looking for",
14 would it be fair to state you told him you were looking for
15 some antique pistols and revolvers which had been stolen a
16 few days before that someplace else in Orange?

17 A Yes. I did.

18 Q All right.

19 A He stated he knew nothing of it. At this point,
20 I told him that he had his rights, he had the right to remain
21 silent, he didn't have to make any statements. He stated that
22 he understood his rights and at this point, there were locked
23 cabinets in this room, and he stated he had the keys to them,
24 and he stated all the stuff in there was his and he went in

1 there and opened the cabinets.

2 Q Now, up to that point, there had been no
3 indication that the key to those cabinets was in the house
4 at 85 Grannis Road until Jimmy Canestri arrived; is that
5 correct?

6 A Right.

7 Q All right. And in fact, didn't you or Rubino tell
8 him that -- I will withdraw that.

9 By this time, you were already searching the
10 room as far as all of the items on the wall; isn't that
11 correct?

12 A We were searching, yes.

13 Q And Rubino was on the phone to Hartford giving them
14 the numbers of all of the weapons that they had already
15 found to see whether or not any or all of them were stolen;
16 is that correct?

17 A Yes, sir.

18 Q And he was on the phone pretty much the entire
19 evening until you left there; is that right?

20 A Just about, sir.

21 Q Until all of the numbers were cleared through the
22 computer; is that right?

23 A I believe so.

24 Q Now, when Jimmy Canestri arrived, you indicated to
25 him that you wanted to search into the locked cabinets; is

1 that correct?

2 A Yes.

3 Q And he indicated that the stuff in there was his
4 and that these dueling pistols were not there; is that right?

5 A What dueling pistols are you referring to?

6 Q Well, the dueling pistols and the other pistols
7 which had been stolen a few days before?

8 A The antiques, right.

9 Q But you told him you were looking for them and
10 would he, please, open them if he had a key; is that correct?

11 A Right.

12 Q And he did?

13 A Right.

14 Q At any time during the evening, did you have a
15 conversation with either Jimmy Canestri or Joe Canestri
16 concerning the set of works or the syringe that had been found
17 and the antique weapons which had been stolen?

18 A Yes. I had occasion to talk to Jimmy about that.

19 Q All right. And about how long after Joey arrived
20 home was that?

21 A I had the conversation with Jimmy about the drugs.
22 You are talking about the alleged drugs that were found?

23 Q Yes. And the antique gun.

24 A Maybe fifteen minutes, sir.

25 Q Somewhere around ten o'clock, approximately, you

1 said Joey arrived maybe around quarter of ten?

2 A Yes.

3 Q I am not trying to tie you down to the minute.

4 A Okay.

5 Q Around ten o'clock somewhere, apparently, you had
6 a conversation with Jimmy?

7 A Right.

8 Q By that time, you pretty much knew that those guns
9 were not on the premises?

10 A Well, I had to take his word for it.

11 Q Well, you had to take his word? You were in the
12 midst of searching the entire premises.

13 A Yes, sir.

14 Q And had been since eight o'clock?

15 A Right.

16 Q And you had been searching that cellar room
17 starting around nine o'clock?

18 A Yes, sir.

19 Q And you had been searching the cabinets that he
20 opened starting around nine-thirty?

21 A Right.

22 Q So by that time, isn't it fair to say that you
23 knew as best you could know, having conducted a thorough
24 search, that the antique weapons that you were looking for
25 originally weren't there?

1 A Well, they weren't in that room, but it doesn't
2 mean they couldn't have been secreted in the wall or something
3 as we were checking every inch of that room.
4

5 Q All right. Well, had you started dismantling the
6 walls at all?

7 A No, sir. We did not.

8 Q Was it ever your intention to dismantle the walls
9 and take the whole house apart, board by board, to look for
10 these antique weapons?

11 A Well, I don't know if we would have went that far.

12 Q Well, by the time you were there two hours with
13 four or six officers, you had searched the entire premises
14 quite carefully, hadn't you?

15 A Just about.

16 Q And the items you were looking for were fairly
17 large items, they weren't teeny, little sugar cubes or
18 anything like that, were they?

19 A No. They were not.

20 Q And with all the weapons you found, you clearly
21 had not found any of the weapons that you originally went
22 there to look for; isn't that right?

23 A Right.

24 Q So by ten o'clock, you would say you had a
25 conversation with Jimmy?

26 A I think it was before ten o'clock. I had this

1 conversation after I found the alleged narcotics.

2 Q Well, Jimmy didn't arrive until about 9:30;
3 right?

4 A Right.

5 Q And Joey arrived about quarter to ten, roughly?

6 A Right.

7 Q And it was sometime after Joey arrived that you
8 talked to Jimmy, whether or not you were going to arrest or
9 pinch his brother?

10 A I found the alleged narcotics between 9:30 and
11 quarter to ten.

12 Q Detective Fumiatti, isn't it right, sir, that the
13 first place you went when you arrived at the house was to
14 Joey Canestri's bedroom?

15 A Yes.

16 Q And isn't it so that while in Joey Canestri's
17 bedroom, even before you went down to the basement and saw
18 Mr. Carl D'Biango, that you found the alleged narcotics or
19 the syringe? Isn't that so?

20 A Would you repeat that?

21 MR. GRUDBERG: May it be read?

22 THE COURT: Yes.

23 (The previous question was read back by
24 the Reporter.)

25 THE WITNESS: Well, after I left his room and

went down to the basement, Carl had not arrived yet.

BY MR. GRUDBERG:

Q Well, when you went to his room, you searched it thoroughly, didn't you?

A No, sir. I did not personally.

Q Who was with you, Officer Rubino?

A And Officer Cybart.

Q Rubino found the syringe?

A I believe so, sir.

Q And he found the syringe within fifteen or twenty minutes at the outset of when you arrived at the premises; isn't that right?

A Right.

Q And you knew about it within a very short time after
that, didn't you?

A Yes.

Q So when you say you got the narcotics, you are talking about when they were turned over to you an hour or so later?

A Nothing was turned over to me.

Q Well, you knew about the finding of the alleged narcotics before 8:30; is that right?

A Just a syringe, sir.

Q All right. Was anything else found besides the
syringe?

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1 A I think there was mention of marijuana. I am not
2 sure.

3 Q And apparently, that was found at some later time?

4 A I think it was all found in the search of Joey's
5 room.

6 Q Which was earlier?

7 A Right.

8 Q And you knew about both the alleged narcotics or
9 marijuana and the syringe by 8:30 at the latest?

10 A Possibly. Yes.

11 Q Well, what is your best recollection?

12 A Because I went downstairs, I didn't stay there to
13 make the complete search of Joey's room because I said there
14 was a basement, and I will go down and start the basement.

15 Q Well, okay. At any rate, whenever it was that you
16 had a conversation with Jimmy Canestri, did he indicate to
17 you that the guns you were looking for weren't in the house
18 but that maybe he could make a couple of phone calls and
19 find them for you or maybe his brother could?

20 A Well, he didn't come up and exactly tell me that.

21 Q What did he say and what did you say?

22 A I explained to him we found the alleged narcotics,
23 and at this point, I talked over with Chief Foyer and
24 Sergeant McLean that if we can retrieve the guns, the antique
25 guns, that no charges will be brought to Jimmy on the narcotics

1 or no one would be arrested on the antique guns.
2

3 Q All right. Did you discuss that with them before
4 the subject had ever been approached by either you or Jimmy
5 Canestri or Joey Canestri or did somebody -- did either
6 you or one of the Canestri's bring up the subject before you
7 went to talk to Foyer and McLean?

8 A I don't recall, sir. I know that when I found
9 this box, it was a small metal box that these needles and
alleged narcotics were in, I called Jimmy over. It was in
10 a cedar chest, and I just showed it to him. At first, he
11 said it wasn't his. He didn't know anything about it. I
12 said "You were the only one that had the key to the room."
13

14 Q Now, I see my confusion. In other words, in
addition to what was found in Joey's room, you said you found
15 some stuff in the locked room down the cellar?
16

A Yes, sir.

Q Okay. So you found some stuff down there?

A Yes, sir.

Q And then you showed them to Jimmy?

A Yes, sir.

Q And he said he didn't know anything about them?

A Yes, sir.

Q And you said "You are the only one that has got the
key."?

A Right.

1
2 Q Was it you that raised some question of maybe
3 they could give you some cooperation concerning the stolen
4 weapons that you were looking for?

5 A I talked it over with the Chief first to get his
6 approval.

7 Q And he said "Well, if they can help us . . ."
8 he would go along with it?

9 A Yes.

10 Q And then you went and talked to Jimmy Canestri?

11 A Right.

12 Q And you indicated to him that if it turned out
13 that the weapons that you were looking for could be returned,
14 you would neither bring any charge against him or his brother
15 or anyone else as to the stolen guns, but also you would
16 forget and you would not make any arrest based on any possible
17 narcotics charge arising out of the search; is that right?

18 A Yes. I did.

19 Q And there was some discussion back and forth
20 between yourself and Jimmy concerning that?

21 A Yes. There was.

22 Q And I take it, throughout this period of time,
23 the search of this room, weapon by weapon and serial number
24 by serial number was continuing; is that right?

25 A Yes, there was, sir.

26 Q Other people were doing that?

1 A Yes.

2 Q And Rubino was on the phone the whole time?

3 A I believe so, sir.

4 Q Now, subsequent to your conversation with Jimmy,
5 did Joey go somewhere? Did he leave?

6 A No. What happened, Joey wasn't there yet. He
7 called -- he made a phone call, then Joey came a few minutes
8 later.

9 Q All right.

10 A He was with another fellow. I don't remember his
11 name.

12 Q You don't know who it was?

13 A Offhand I don't.

14 Q Then, apparently, Jimmy had a conversation with
15 Joey?

16 A Yes. He wanted a private conversation. He went
17 over to the corner. He talked to him.

18 Q Subsequent to that, Joey left the premises again?

19 A Yes.

20 Q And about how long was he gone? A couple of hours?

21 A About two and a half to three hours.

22 Q All right. And he got back shortly before you
23 left?

24 A I would say yes, about ten minutes before we left
25 there.

1 Q And he had, in fact, in his possession at that
2 time the weapons?

3 A All but one of them, sir. I think he had 18 of
4 them or 17 of them.

5 Q In fact, before he left, isn't it true that either
6 he or Jimmy told you that he was going to get the weapons?

7 A Yes.

8 Q And at least they had represented to you that
9 wherever the weapons were, they weren't in the house, and they
10 were going somewhere else to obtain them somehow?

11 A Right.

12 Q And that representation had been made by either
13 Jimmy or Joey or both to you?

14 A Right.

15 Q And so for that next two or three hours while you
16 waited for Joey's return, I take it it would be fair to state
17 that this search continued on?

18 A Not for the entire time, sir, because we were
19 practically through.

20 Q Well, all right. As long as it took to write
21 down and get all the numbers so Rubino could put them through
22 to Hartford?

23 A I believe the machine broke down once or twice in
24 his calling there and ten or fifteen minute intervals, I guess,
25 before it was repaired, but that was the extent of it. I

1 think we waited, just sat down in the basement for about an
2 hour and a half until Jimmy -- Joseph returned with the
3 guns.

4 Q And Rubino was the only one busy at that time,
5 he was still on the phone running the numbers to Hartford; is
6 that correct?

7 A Right. When Joey was leaving to get the guns,
8 right.

9 Q But throughout that entire period of time, basically,
10 the rest of you, other than Rubino, were just waiting for
11 Joey to return with the guns that you had originally been
12 looking for?

13 A Yes.

14 Q And you, based on his representation, expected him
15 at some time later in the evening as soon as he could get
16 back to bring those guns back?

17 A Yes.

18 MR. GRUDBERG: I have nothing further.

19 THE COURT: Mr. Maxwell.

20 ·CROSS EXAMINATION

21 BY MR. MAXWELL:

22 Q Detective Fumiatti, to clear up the reference to
23 narcotics, is it your understanding that a syringe or set of
24 works was found upstairs in the room normally occupied by
25 Joseph Canestri?

1 A Yes.

2 Q And then there was a separate amount of suspected
3 narcotics, syringes, found downstairs in the room where all
4 the guns were?

5 A Yes. There was.

6 Q Who found the stuff that was in the room downstairs?

7 A I did, sir.

8 Q And was this subsequent to Mr. James Canestri
9 arriving on the premises?

10 A It was just after he arrived.

11 Q I see. Was he in the room when you found it?

12 A He might have been in the room or he was in the
13 cellar area. I know that.

14 Q Did you observe him opening the cabinets so that
15 the cabinets could be searched?

16 A Yes, sir. I observed him go in with the keys and
17 open these cupboards.

18 Q Are you familiar with the weapons that are named in
19 the indictment, the short barrel rifle and the German machine
20 gun?

21 A I saw the machine gun.

22 Q I see. These weapons, were they found by
23 Officer Rubino prior to your finding the narcotics down there?

24 A Yes.

25 Q And this was prior to Mr. Joseph Canestri's arrival

1 on the premises?

2 A Yes. There was.

3 Q It would have been prior to any conversation with
4 James Canestri concerning a deal to forget about any possible
5 narcotics charges and possession of the stolen antique
6 weapons?

7 A Yes. It was.

8 MR. MAXWELL: I have nothing further.

9 EXAMINATION BY

10 THE COURT:

11 Q Just as a matter of curiosity, Mr. Fumiatti, would
12 you just tell me why you said you would not arrest the
13 defendant or anyone in his household on the alleged narcotics
14 and on any of the stolen gun charges if you can get back the
15 antique guns because at that point you didn't know if all ,
16 70 guns in that room were stolen?

17 A I did not make any deal with him on any of the
18 guns that were in the room, Your Honor.

19 Q Oh.

20 A It was just the guns that were stolen, the antique
21 guns, being that the value was placed, I think, at \$9,000.00.

22 Q I see. But in other words, as far as you are
23 concerned, the local police never indicated that none of the
24 Canestri's would be prosecuted for any of the guns named in
25 this indictment?

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OUR FILE NO.

May 6, 1975

A. Daniel Fusaro, Clerk
United States Court of Appeals
Foley Square
New York, New York 10007

Re: U.S. vs. James Canestri
Docket No. 75-1143

Dear Mr. Fusaro:

I am enclosing herewith ten copies of the Appendix to Appellant's Brief in the above matter.

I have served two copies upon the Government by serving Thomas F. Maxwell, Jr. the assistant who tried the case by First Class Mail. The briefs will follow later in the week.

Very truly yours,

JACOBS, JACOBS & GRUDBERG, P.C.

By Ira B. Grudberg
Ira B. Grudberg

IBG:dct

Enc.

cc: Thomas F. Maxwell, Jr., Esq.